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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

MIKE GLEASON—Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2008 FEB -5 P 4:49
AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE
APPLICATION OF ARIZONA WATER
COMPANY, AN ARIZONA
CORPORATION, TO EXTEND ITS
EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AT
CASA GRANDE, PINAL COUNTY,
ARIZONA

DOCKET NO. W-01445A-03-0559

NOTICE OF FILING PREFILED
REBUTTAL TESTIMONY OF
JIM POULOS AND DR. FRED
GOLDMAN

In accordance with the Procedural Order dated November 8, 2007, as amended by the Procedural Order dated February 4, 2008, intervenor Cornman Tweedy 560, LLC, hereby files the pre-filed rebuttal testimony and accompanying exhibits of Jim Poulos and the pre-filed rebuttal testimony of Dr. Fred Goldman.

RESPECTFULLY submitted this 5th day of February, 2008.

SNELL & WILMER

Jeffrey W. Crockett, Esq.

Bradley S. Carroll, Esq.

One Arizona Center

Phoenix, Arizona 85004-2202

Attorneys for Cornman Tweedy 560, LLC

ORIGINAL and thirteen (13) copies of the foregoing have been filed with Docket Control this 5th day of February, 2008.

Arizona Corporation Commission
DOCKETED

FEB -5 2008

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Snell & Wilmer

LAW OFFICES
One Arizona Center, 400 E. Van Buren
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1 A COPY of the foregoing was hand-
2 delivered this 5th day of February, 2008, to:

3 Christopher C. Kempley, Chief Counsel
4 Legal Division
5 ARIZONA CORPORATION COMMISSION
6 1200 West Washington Street
7 Phoenix, Arizona 85007

8 Ernest Johnson, Director
9 Utilities Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 A COPY of the foregoing sent via e-mail and first
14 class mail this 5th day of February, 2008, to:

15 Steven A. Hirsch, Esq.
16 BRYAN CAVE LLP
17 Two North Central Ave., Suite 2200
18 Phoenix, Arizona 85004-4406

19 Robert W. Geake, Vice President and General Counsel
20 ARIZONA WATER COMPANY
21 P.O. Box 29006
22 Phoenix, Arizona 85038

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MIKE GLEASON – Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

DOCKET NO. W-01445A-03-0559

REBUTTAL TESTIMONY AND EXHIBITS OF JIM POULOS IN THE

REMAND PROCEEDING

ON BEHALF OF INTERVENOR

CORNMAN TWEEDY 560, L.L.C.

FEBRUARY 5, 2008

1 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND
2 OCCUPATION.

3 A. My name is Jim Poulos. I am Vice President of Cornman Tweedy 560, LLC
4 ("Cornman Tweedy"), the intervenor in this case. I am also a Vice President or
5 general manager of various land acquisition companies, land development
6 companies, construction companies and public utilities owned or controlled by
7 Edward J. Robson ("Robson"). My business address is 9532 East Riggs Road,
8 Sun Lakes, Arizona 85248.

9 Q. HAVE YOU PREVIOUSLY PROVIDED PRE-FILED DIRECT
10 TESTIMONY IN THIS REMAND PROCEEDING?

11 A. Yes. I submitted pre-filed direct testimony dated January 4, 2008.

12 Q. HAVE YOU REVIEWED THE PRE-FILED DIRECT TESTIMONY AND
13 ACCOMPANYING EXHIBITS OF ARIZONA WATER COMPANY
14 ("AWC") WILLIAM M. GARFIELD SUBMITTED JANUARY 4, 2008, IN
15 THIS DOCKET?

16 A. Yes. I have read Mr. Garfield's direct testimony and reviewed the attached
17 exhibits.

18 Q. AT PAGE 3 OF HIS DIRECT TESTIMONY, MR. GARFIELD STATES
19 THAT "THE ONLY REMAINING ISSUE FOR THE COMMISSION TO
20 DECIDE IN THIS PROCEEDING IS WHETHER ANY PARTY CAN
21 PROVE BY CLEAR AND CONVINCING EVIDENCE THAT ARIZONA
22 WATER COMPANY IS NO LONGER A FIT AND PROPER ENTITY TO
23 PROVIDE WATER SERVICE IN THE CORNMAN TWEEDY
24 PROPERTY IN THE COMPANY'S CCN AREA THAT IS NOW
25 UNCONDITIONALLY PART OF ARIZONA WATER COMPANY'S CCN
26 PURSUANT TO DECISION NO. 69722." DO YOU AGREE THAT THE
27 SCOPE OF THIS REMAND PROCEEDING IS LIMITED TO WHETHER
28 AWC IS "FIT AND PROPER"?

1 A. No. The Arizona Corporation Commission ("Commission") was very clear in
2 Decision 69722 that the scope of this remand proceeding is broad, as set forth at
3 page 4 of the decision:

4 After considering the evidence in this matter, we are
5 concerned that there may not be a current need or necessity
6 for water service in the portions of the extension area that are
7 owned by Cornman. We also recognize that Cornman does
8 not wish to have its property included in Arizona Water's
9 CC&N at this time. We believe that these issues bear further
examination and that they may have some relevance to the
best interests of the area ultimately to be served.

10 ...[R]egarding the property that is owned by Cornman, we
11 would like an opportunity to consider the overall best
12 interests of the Cornman area and of the public. We will
13 therefore reopen the record in this matter pursuant to A.R.S.
14 § 40-252 and remand this case to the Hearing Division for
further proceedings regarding whether Arizona Water should
continue to hold a CC&N for the Cornman extension area at
this time.

15 While the matter currently before us presented relatively
16 narrow issues, we view the proceeding on remand as broad in
17 scope so that the Commission may develop a record to
18 consider the overall public interest underlying service to the
19 Cornman property that is included in the extension area
20 granted by Decision No. 66893. By identifying these issues
21 requiring further proceedings, we are not prejudging this
matter in any way; instead, we merely desire an opportunity
to consider the broader public interest implicated herein.
(Decision 69722 at 4) (emphasis added).

22 Mr. Garfield's statement of the issue in his pre-filed testimony is
23 nonsensical and attempts to improperly narrow the scope of this remand
24 proceeding. The Commission just ruled in Decision 69722 that AWC is fit and
25 proper to provide water service to the extension area. Decision 69722 at 20,
26 Conclusion of Law 3. Thus, there is no reason the Commission would remand
27 this case on that issue. Rather, the Commission remanded the case to develop a
28 complete record around: (i) whether there is a current need and necessity for

1 water service at the property owned by Cornman Tweedy; and (ii) the reasons
2 Cornman Tweedy does not want its property included in AWC's Certificate of
3 Convenience and Necessity ("CC&N"). Further, the Commission ordered that
4 this remand proceeding be "broad in scope so the Commission may develop a
5 record to consider *the overall public interest underlying service to the Cornman*
6 *property.*" (Decision 69722 at 20, ¶104, lines 4-5) (emphasis added).

7 In my pre-filed direct testimony in this remand proceeding, I outlined the
8 facts which demonstrate that there is no current need or necessity for water
9 service at the property owned by Cornman Tweedy. In addition, my testimony
10 and the pre-filed direct testimony of Dr. Fred Goldman and Mr. Paul Hendricks
11 set forth the reasons why Cornman Tweedy does not wish to have its property
12 included in AWC's CC&N. I will briefly summarize those reasons here for the
13 Commission's convenience:

- 14 • There is no request for water service from Cornman Tweedy.
- 15 • Service by AWC would split the EJ Ranch property
16 between two water providers—AWC and Picacho Water
17 Company—which would lead to:
 - 18 (i) A doubling up of water infrastructure construction
19 thereby increasing construction costs for the developer
20 and leading to higher rates for customers;
 - 21 (ii) Increased design and engineering costs, water master
22 plan modeling costs, and administration costs caused
23 by dealing with two different water providers; and
 - 24 (iii) Time delays and inefficiencies of dealing with two
25 different water providers.
- 26 • Service by AWC would eliminate the opportunity for an
27 integrated water and wastewater provider for the EJ Ranch
28 property. Integrated providers provide important public

benefits including:

- (i) Maximization of the use of reclaimed wastewater and conservation of groundwater supplies;
- (ii) Increased efficiencies and flexibility in dealing with waste streams; and
- (iii) Operational efficiencies and cost savings in operating integrated water and wastewater systems.

- Allowing AWC to serve the Cornman Tweedy property ignores the wishes of the landowner.
- Robson's relationship with AWC is often frustrating and costly.

Q. IS THE COMMISSION'S CONSIDERATION OF THE "NEED AND NECESSITY" FOR WATER SERVICE AN IMPORTANT FACTOR IN DETERMINING "THE OVERALL PUBLIC INTEREST UNDERLYING SERVICE TO THE CORNMAN PROPERTY"?

A. Yes. The showing of a "need and necessity" for service is an essential underpinning of a CC&N, and it is specifically identified in Decision 69722 as one of the considerations in this remand proceeding. The "need and necessity" must exist at the time a CC&N is granted or extended, and it must continue to exist if the CC&N is to remain in place. In the June 12, 2006, Staff Report in this docket, Assistant Director Steve Olea stated that "[t]he basic reason to require a time limit for the submission of both the developer's CAWS and the MXA is to help ensure that there is truly a necessity for the service being provided." Staff Report at 1 (June 12, 2006). Whether there is a need and necessity for water service at the property owned by Cornman Tweedy is squarely within the scope of this proceeding.

Q. IN ADDITION TO NEED AND NECESSITY, IS AN EXAMINATION OF THE REASONS WHY CORNMAN TWEEDY DOES NOT WISH TO

1 **HAVE ITS PROPERTY INCLUDED IN THE CC&N OF AWC WITHIN**
2 **THE SCOPE OF THIS REMAND PROCEEDING?**

3 A. Yes. In Decision 69722, the Commission makes it clear that the reasons why
4 Cornman Tweedy does not wish to have its property included in AWC's CC&N
5 is within the "broad" scope of this remand proceeding. It is also clear that the
6 issues raised by Cornman Tweedy in this proceeding are on the Commission's
7 mind at this time. Just last month, the Commission issued Decision 70128
8 (Dockets Nos. RW-00000B-07-0051 and RSW-00000B-07-0051) which ordered
9 that proposed amendments to Arizona Administrative Code ("A.A.C.") Rule
10 R14-2-402 be forwarded to the Arizona Secretary of State for a Notice of
11 Proposed Rulemaking (the "Rulemaking"). A copy of Decision 70128 is
12 attached to this rebuttal testimony as Exhibit 1. Based upon my participation in
13 the Rulemaking where I submitted comments and attended the workshop and
14 open meetings, it is my understanding that the proposed revisions and additions
15 were developed to address shortcomings in the existing rules regarding the grant
16 or extension of CC&Ns. Specifically, the Commission proposed several
17 additions which, in my opinion, are intended to ensure that applicants meet the
18 requisite showing of "need and necessity" before new CC&Ns or extensions are
19 granted and that the process takes into account the desires of the landowner
20 affected by the application. For example, the Commission proposed that the
21 following additional new information be included with CC&N applications:

- 22 • A copy of any requests for service for the area under
23 application with the requested water service provider
24 identified.
- 25 • A copy of the applicant's notice of the application to all the
26 landowners in the area under application who did not request
27 service.
- 28 • The written response to the notice from each landowner who
did not request service.

- 1
- 2 • If a landowner did not respond to the notice of the
- 3 application, the application shall include a description of the
- 4 action taken by the applicant to obtain a written response
- 5 from the land owner.

6 The initial showing of a need and necessity for service is obviously

7 critical in the issuance of a CC&N, as evidenced by these additional items that

8 must be submitted with CC&N applications under the revised rules. However, a

9 continuing need and necessity for service is also critical, and something the

10 Commission is evaluating in this remand proceeding, as evidenced by the

11 language contained in Decision 69722. The proposed rule revisions and

12 additions in the Rulemaking are clearly intended to help the Commission make

13 determinations regarding the need and necessity for service.

14 In addition, I believe that the proposed revisions and additions to Rule

15 R14-2-402 are intended to help the Commission determine whether the

16 landowner desires service from the entity applying for a CC&N. I have

17 discussed above the many reasons why Cornman Tweedy does not wish to have

18 its property included in AWC's CC&N.

19 **Q. DO YOU BELIEVE THE COMMISSION ADOPTED THE PROPOSED NEW**

20 **REQUIREMENTS LISTED ABOVE IN RESPONSE TO THE PRACTICE BY**

21 **SOME UTILITIES OF FILING FOR LARGE EXPANSIONS OF THEIR**

22 **CC&NS WITHOUT AN UNDERLYING SHOWING OF A NEED AND**

23 **NECESSITY FOR SERVICE?**

24 **A.** Yes. I am aware of occasions where utility companies have sought substantial

25 extensions of their CC&Ns with minimal underlying requests for service supporting the

26 extensions. In this case, for example, AWC obtained a CC&N for more than 7,000

27 acres on the basis of two requests for service covering only 720 acres, or about 10% of

28 the extension area. Similarly, in Docket W-01445A-06-0199, AWC filed an

application seeking to extend its CC&N to include more than 69,000 acres in Pinal

1 County. However, AWC's application was supported by only five requests for service
2 totaling less than 200 acres—a small fraction of 1% of the total area requested. The
3 certification of lands without an underlying need and necessity for service leads to a
4 variety of problems, including foreclosing of future options available to the
5 Commission and lost opportunities for water and wastewater integration. In my pre-
6 filed direct testimony and the pre-filed direct testimony of Dr. Fred Goldman and Mr.
7 Paul Hendricks, we discuss the public interest issues that come into play, as
8 summarized in my rebuttal testimony above, when lands are certificated without a need
9 and necessity for service. I believe the Commission has recognized that this is a
10 problem, and has acted to address the problem with the rule revisions and additions
11 identified above.

12 **Q. IS THE EVALUATION OF OPPORTUNITIES FOR INTEGRATION OF**
13 **WATER AND WASTEWATER SERVICES WITHIN THE SCOPE OF**
14 **THIS REMAND PROCEEDING UNDER DECISION 69722?**

15 A. Yes. I believe the Commission must take into account the opportunity for integration
16 of water and wastewater services in order to "consider the overall public interest
17 underlying service to the Cornman property" as set forth in Decision 69722. There is
18 no doubt that integration of water and wastewater services is very important to the
19 Commission and an issue the Commission is addressing at this time. In the
20 Rulemaking I discussed above, the Commission proposed and approved
21 additions to Rule R14-2-402 which address integration of water and sewer
22 operations. At the Open Meeting held January 15, 2008, Commissioner Mayes
23 proposed two amendments to Rule R14-2-402 and Commission Gleason
24 proposed one amendment, all three of which dealt with integration of water and
25 wastewater service, encouraging the use of reclaimed wastewater and conserving
26 groundwater. Each of the amendments passed on a 5-0 vote and were
27 incorporated in Decision 70128.
28

1 In filing an application for a CC&N or extension, the Commission has
2 proposed that a water company provide the following additional information:

- 3 • The name of the wastewater provider in the area under
4 application along with a letter from the wastewater service
5 provider to encourage water conservation, including
6 promoting the use of reclaimed water.
- 7 • A description of how water will be provided for golf courses,
8 ornamental lakes, other aesthetic water features, greenbelts,
9 or parks within the area under application.
- 10 • Plans or description of water conservation measures. Such
11 plans shall include, at a minimum, the following: (1) a
12 description of the information about water conservation or
13 water saving measures that the utility provides to the public
14 and its customers; (2) a description of the sources of water
15 that will be used to supply parks, recreation areas, golf
16 courses, greenbelts, ornamental lakes, and other aesthetic
17 features; (3) a description of plans for the use of reclaimed
18 water; (4) a description of plans for the use of recharge wells;
19 (5) a description of plans for the use of surface water; (6) a
20 description of any other plans or programs in place to
21 promote water conservation.

22 Each of these items goes directly or indirectly to the integration of water
23 and wastewater service, and specifically, the beneficial use of effluent in an area.
24 Robson pioneered the model in Arizona of integrating water and wastewater
25 operations, which is embodied in items 3 and 4 above.

26 In addition to the amendments adopted in the Rulemaking, in an article
27 entitled *Encouraging Conservation by Arizona's Private Water Companies: A*
28 *New Era of Regulation by the Arizona Corporation Commission* published in the
Arizona Law Review, 49 Ariz. L. Rev. 297 (2007), Commissioner Mayes
discussed the Commission's preference for integrated water and wastewater
providers, stating:

In recent months, the Commission has issued decisions
indicating a preference that new subdivisions be served,
where possible, by integrated water and wastewater

1 companies. These integrated utilities help to achieve
2 economies of scale, encourage conservation efforts, and
3 facilitate the use of effluent for golf course irrigation,
4 ornamental lakes, and other water features. The concept of
5 integrated wastewater and water companies was approved by
6 the 1999 Commission Water Task Force, a working group
7 comprised of Commission Staff, the Residential Utility
8 Consumer Office ("RUCO"), ADEQ, ADWR, and water
company stakeholders. Though the Task Force's policy
proposals have never been formally adopted by the
Commission, the integrated water and wastewater model has
been explicitly favored in several recent decisions.

9 ***

10 Companies competing for the right to serve some of the
11 state's fastest growing areas are advantaged when they present
12 an integrated approach to the Commission, thus allowing
13 Commissioners the opportunity to mandate the use of effluent
from the moment the service area is created. (footnotes
omitted).

14 A copy of Commissioner Mayes' article is attached as Exhibit 2. These
15 statements by Commissioner Mayes are consistent with actions taken by the
16 Commission in recent cases of competing water providers. Commissioner
17 Mayes discussed one such case in her article:

18 In *Woodruff*, the Commission was presented with a choice
19 between two water companies that wanted to serve the same
20 3,200 acre development (called Sandia) in a fast growing area
21 of Pinal County. The Commission's decision was heavily
22 influenced by the question of whether the CC&N should be
23 granted to an entity capable of utilizing effluent. Ultimately,
24 the Commission awarded the CC&N to Woodruff Water and
25 Sewer Companies over AWC. The Commission chose
26 Woodruff despite the fact [that] AWC was a far more
27 experienced water provider. The Commission favored
28 Woodruff's planned use of effluent from its planned
wastewater treatment facility to sustain the development's
proposed golf course. During the CC&N hearing, Woodruff
testified that its integrated approach to wastewater and water
was designed to facilitate a 20-year build-out of the
development, and that it would allow it to implement a water

1 reuse program that it called "essential" to the project. Against
2 this backdrop, the Commission concluded that "[t]he benefits
3 of developing and operating integrated water and wastewater
4 utilities in this instance outweigh the economies imputed to
5 AWC's larger scale." (footnotes omitted).

6 From these statements and the proposed rule revisions in the Rulemaking, it is
7 clear that the Commission is very interested in the public policy of integrated
8 water and wastewater providers. An evaluation of the opportunity for
9 integration of water and wastewater services in this remand proceeding is
10 entirely consistent with "the overall public interest underlying service to the
11 Cornman property" as set forth in Decision 69722.

12 **Q. AT PAGE 5 OF HIS DIRECT TESTIMONY IN THE REMAND**
13 **PROCEEDING, MR. GARFIELD DISCUSSES AWC'S CAP**
14 **ALLOCATION OF 10,884 ACRE FEET, AND STATES THAT "THESE**
15 **RENEWABLE SURFACE WATER SUPPLIES WILL BENEFIT THE**
16 **COMPANY'S ENTIRE PINAL VALLEY CCN AREA, INCLUDING THE**
17 **CORNMAN TWEEDY PROPERTY." HE FURTHER STATES THAT**
18 **"NEITHER ROBSON, NOR ITS AFFILIATE, PICACHO WATER**
19 **COMPANY, CAN SAY THE SAME, NOR HAVE THEY PROVIDED**
20 **ANY PLANS FOR REGIONAL SURFACE WATER SUPPLY**
21 **DEVELOPMENT, TREATMENT, AND DELIVERY." DOES THE**
22 **ROBSON MODEL OF PROVIDING INTEGRATED WATER AND**
23 **WASTEWATER OPERATIONS PRODUCE A RENEWABLE WATER**
24 **RESOURCE?**

25 **A.** Absolutely. Robson is the recognized pioneer in Arizona in the direct reuse and
26 recharge of reclaimed wastewater, a renewable resource. As such, Robson
27 strongly supports the Commission's preference for integrated water and
28 wastewater services under a single provider and believes that integrated
providers are best suited to maximize water and reclaimed water resources.

1 Allow me to demonstrate the efficiency of Robson's integrated model in
2 generating and delivering usable reclaimed wastewater supplies. In
3 developments where Robson-affiliated utilities are certificated to provide both
4 water and wastewater service in Arizona, the combined projected pumping of
5 service area water at full build-out is an estimated 28,400 acre-feet per year
6 under existing CC&N boundaries. Within the same CC&N boundaries at full
7 build-out, the Robson utilities will generate and deliver an estimated 12,600
8 acre-feet per year of reclaimed wastewater for direct reuse or recharge. For each
9 acre-foot of service area water pumped by a Robson utility, an estimated 44% of
10 that quantity will be directly reused or recharged, offsetting the need for
11 additional groundwater pumping. By way of comparison, AWC's CAP
12 allocation of 10,884 acre-feet (which is actually less than the 12,600 acre-feet of
13 reclaimed wastewater that will be delivered by Robson utilities with a smaller
14 combined CC&N area) represents only 9% of the 120,000 acre-feet of
15 groundwater under AWC's updated Physical Availability Determination for its
16 Pinal Valley Water System Planning Area attached as Exhibit WMG-15 to Mr.
17 Garfield's Direct Testimony in this remand proceeding. Despite the benefits of
18 integrated water and wastewater systems, AWC has steadfastly refused to
19 provide wastewater service in the areas it serves.

20 **Q. PLEASE SUMMARIZE WHAT CORNMAN TWEEDY IS ASKING THE**
21 **COMMISSION TO DO IN THIS PROCEEDING?**

22 A. Cornman Tweedy requests that the Commission exclude from AWC's CC&N
23 that portion of the property owned by Cornman Tweedy that is located within
24 the area described in Exhibit A to Decision 66893 for the reasons that are stated
25 in my pre-filed direct testimony and the pre-filed direct testimony of Dr. Fred
26 Goldman and Mr. Paul Hendricks.

27 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

28 A. Yes, thank you.

EXHIBIT 1

BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

Arizona Corporation Commission

DOCKETED

JAN 23 2008

DOCKETED BY

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IN THE MATTER OF RULEMAKING TO
AMEND EXISTING RULES AND/OR
ESTABLISH NEW RULES REGARDING
THE COMMISSIONS REQUIREMENTS
FOR APPLICATIONS REQUESTING
APPROVAL TO OBTAIN A NEW
CERTIFICATE OF CONVENIENCE AND
NECESSITY OR EXTEND AN EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR WATER AND SEWER
UTILITIES

DOCKET NOS. RW-00000B-07-0051
RSW-00000A-07-0051

DECISION NO. 70128

ORDER

Open Meeting
January 15 and 16, 2008
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. At the January 17, 2007 Open Meeting, the Commission requested that the Hearing Division open a new docket for a rulemaking proceeding regarding Arizona Administrative Code Rules R14-2-402 and R14-2-602 ("Rules"), the applications for new Certificates of Convenience and Necessity ("CC&N") and extensions of CC&Ns for water and sewer utilities.

2. The proposed changes to the Rules require that additional information be included in the applications generally relating to need, technical issues and financial matters.

3. On March 6, 2007, the Utilities Division distributed the proposed Rule changes requested by Commissioners to approximately 400 interested parties and invited written comments. Eleven parties docketed written responses.

1 4. On April 25, 2007, a special Open Meeting was noticed regarding these dockets and
2 on June 8, 2007, a meeting was held among interested parties, with Commissioners in attendance,
3 to discuss the proposed Rule changes.

4 5. Some of the written comments and comments from the meeting have been
5 incorporated into the proposed Rule changes.

6 6. Staff has recommended that the proposed changes to the Rules be forwarded to the
7 Secretary of State for Notice of Proposed Rulemaking.

8 7. Staff further recommends that the Hearing Division schedule a public comment
9 proceeding on the proposed changes to the Rules no earlier than thirty days after publication in the
10 Arizona Register, but as soon as practicable thereafter, in Phoenix and/or Tucson, Arizona.

11 8. We will adopt Staff's recommendations regarding the proposed changes to the
12 Rules, except that we will direct Staff to modify proposed R14-2-402(B)(2)(p) as follows:

13 On the last line of page 4 of the proposed Rules attached to this
14 Decision, after "application" INSERT "along with a letter from the
15 wastewater service provider confirming the provision of such
16 service and a description of how the applicant will work with the
17 wastewater service provider to encourage water conservation,
18 including promoting the use of reclaimed water."

19 20 CONCLUSIONS OF LAW

21 1. Pursuant to Article XV of the Arizona Constitution and A.R.S. Title 40 generally,
22 the Commission has authority in this matter.

23 2. It is in the public interest to issue a Procedural Order in this matter as requested by
24 Staff.

25 ORDER

26 IT IS THEREFORE ORDERED that the proposed changes to the Rules as modified herein
27 be forwarded to the Secretary of State for Notice of Proposed Rulemaking.

1 IT IS FURTHER ORDERED that the Hearing Division schedule a public comment
2 proceeding on the proposed changes to the Rules as modified herein no earlier than thirty days
3 after publication in the Arizona Register, but as soon as practicable thereafter, in Phoenix and/or
4 Tucson, Arizona.

5 IT IS FURTHER ORDERED that this Decision become effective immediately.

6
7 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

8
9 
CHAIRMAN

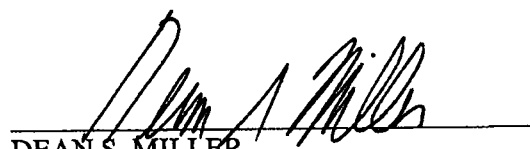

COMMISSIONER

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COMMISSIONER


COMMISSIONER


COMMISSIONER

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13
14 IN WITNESS WHEREOF, I DEAN S. MILLER, Interim
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto, set my hand and caused the official seal of
17 this Commission to be affixed at the Capitol, in the City of
18 Phoenix, this 23rd day of January, 2008

19 
20 DEAN S. MILLER
Interim Executive Director

21
22 DISSENT: _____

23
24 DISSENT: _____

25 EGJ:LAJ:lhv\RM
26
27
28

1 SERVICE LIST FOR: RULEMAKING

2 DOCKET NOS. RW-00000B-07-0051 and RSW-00000A-07-0051

3 A. Petersen Water Company
4 PO Box 1270
5 Show Low, AZ 8590212706 Abra Water Company, Inc.
7 PO Box 515
8 Paulden, AZ 863349 Adaman Mutual Water Company
10 16251 W Glendale Ave
11 Litchfield Park, AZ 8534012 Aguila Water Services, Inc.
13 PO Box 1086
14 Sun City, AZ 8537215 Ajo Improvement Company
16 PO Drawer 9
17 Ajo, AZ 8532118 Alpine Water System, Inc.
19 PO Box 822
20 Alpine, AZ 8592021 American Realty and Mortgage Co., Inc.
22 dba Hacienda Acres Water System
23 PO Box 232
24 Wittman, AZ 8536125 Antelope Lakes Water Company
26 501 N Hwy 89
27 PO Box 350
28 Chino Valley, AZ 86323Antelope Run Water Company
301 N. Garden Ave
Sierra Vista, AZ 85635Antelope Water Company
35730 Antelope Dr
Wellton, AZ 85356Anway Manville L.L.C. Water Company
7400 N. Oracle Rd., Ste. 236
Tucson, AZ 85704Appaloosa Water Company
PO Box 3150
Chino Valley, AZ 86323Arivaca Townsite Cooperative Water
Company
PO Box 398
Arivaca, AZ 85601Arizona Water Company
PO Box 29006
Phoenix, AZ 85038-9006Arizona Windsong Realty, Inc.
PO Box 261
Sanders, AZ 86512Arizona-American Water Company
19820 N. 7th St., Ste 201
Phoenix, AZ 85024Arroyo Water Company, Inc.
HC 6, Box 1048 L
Payson, AZ 85541Ash Creek Water Company
PO Box 825
Thatcher, AZ 85552Ash Fork Development Association, Inc.
dba Ash Fork Water Service
PO Box 293
Ash Fork, AZ 86320AVM-2005, LLC
15051 N Kierland Blvd, Ste 200
Scottsdale, AZ 85254

1	Avra Water Cooperative, Inc. 11821 W. Picture Rocks Rd. Tucson, AZ 85743	Berneil Water Company PO Box 219 Tempe, AZ 85280-0219
3	Baca Float Water Company PO Box 1536 Tubac, AZ 85646	Biasi Water Company, Inc. PO Box 518 Beaver Dam, AZ 86432
6	Bachmann Springs Utility Company PO Box 9 Tombstone, AZ 85638	Bidegain Water Company PO Box 538 Kearny, AZ 85237
8	Balterra Sewer Corp. c/o Jay L. Shapiro 3003 N. Central Ave., Ste. 2600 Phoenix, AZ 85012	Big Park Water Company 45 Castle Rock Rd., Ste. 4 Sedona, AZ 86351
11	Beardsley Water Company, Inc.. c/o First National Management, Inc. PO Box 1020 Apache Junction, AZ 852171020	Black Mountain Sewer Corporation 12725 W. Indian School Rd., Ste. D101 Avondale, AZ 85392
14	Beaver Dam Water Company, Inc. PO Box 550 Littlefield, AZ 86432	Bob B. Watkins dba East Slope Water Company 301 N. Garden Ave Sierra Vista, AZ 85635
16	Beaver Valley Water Company PO Box 421 Payson, AZ 85547	Bonita Creek Land & Home Owners Association c/o Linda Kelley HC7 Box 271R Payson, AZ 85541
19	Bella Vista Water Company, Inc. 12725 W. Indian School Rd., Ste. D101 Avondale, AZ 85323	Boynton Canyon Enchantment Homeowners Association 525 Boynton Canyon Rd. Sedona, AZ 86336
21	Bellemont Water Company, Inc. PO Box 31176 Flagstaff, AZ 86003	Bradshaw Water Company, Inc. PO Box 12758 Prescott Valley, AZ 86304
23	Bensch Ranch Utilities, LLC 6825 E. Tennessee Ave., Ste 547 Denver, CO 80224	Brooke Water LLC PO Box 82218 Bakersfield, CA 93380
25	Bermuda Water Company 2335 Sanders Rd. Northbrook, IL 60062	Caballeros Water Company, Inc. 1551 S. Vulture Mine Rd Wickenburg, AZ 85390
28		

1 Cactus-Stellar Limited
12625 W. Cactus Ridge
2 HCR #2 Box 469
3 Tucson, AZ 85735
4 Camp Verde Water System
PO Box 340
5 Camp Verde, AZ 86322
6 Carter's Water Company
1157 East Sunset Dr
7 Casa Grande, AZ 85222
8 Casa Grande South Water Company
117 E. Second St.
9 Casa Grande, AZ 85222
10 Casa Grande West Water Co., Inc.
117 E Second St.
11 Casa Grande, AZ 85222
12 Cayetano, Inc.
dba Lakewood Water Company
13 PO Box 733
14 Amado, AZ 85645
15 C-D Oasis Water Company
1665 10th St.
17 Douglas, AZ 85607
18 Cerbat Water Company
2409 Ricca Dr
19 Kingman, AZ 86401
20 Chaparral City Water Company
Attn: Accounts Payable - G. O.
21 630 E. Foothills Blvd.
22 San Dimas, CA 91773
23 Chaparral Water Company
2601 W. Dunlap, Ste 10
24 Phoenix, AZ 85021
25 Chino Meadows II Water Company
PO Box 350
26 Chino Valley, AZ 86323
27
28

Cibola Mutual Water Company
RR2, Box 77
Cibola, AZ 85328
Cienega Water Company, Inc.
PO Box 3518
Parker, AZ 85344
Circle City Water Company, L.L.C.
PO Box 82218
Bakersfield, CA 93380
Citrus Park Water Co., Inc.
9361 Citrus Circle SE
Tacna, AZ 85352
Clear Springs Utility Company, Inc.
PO Box 85160
Tucson, AZ 85754
Clearwater Utilities Company, Inc.
20441 W. Cheyenne
Buckeye, AZ 85326
Cloud Nine Water Company Inc.
96 Bel Aire Pl., Ste 140
Sierra Vista, AZ 85635
Coldwater Canyon Water Company
PO Box 637
Black Canyon City, AZ 85324
Community Water Company of Green Valley
1501 S. La Canada Dr.
Green Valley, AZ 85614
Cordes Lakes Water Company
PO Box 219
Tempe, AZ 85280
Coronado Utilities, Inc.
6825 E. Tennessee Ave., Ste. 547
Denver, CO 80224
CP Water Company
c/o Global Water
21410 N. 19th Ave., Ste. 201
Phoenix, AZ 85027

1	Cross Creek Ranch Water Company	Doney Park Water
2	c/o HOAMCO	5290 E. Northgate Loop
3	6586 Hwy 179, Ste., C-1	Flagstaff, AZ 86004
4	Sedona, AZ 86351	
5	Crown King Water Company, Inc.	Double R Water Distributors Inc.
6	6428 W. Garden Dr.	1515 N Lake Havasu Ave., Ste 100
7	Glendale, AZ 85304	Lake Havasu City, AZ 86404
8	Dairyland Water Co-Op	
9	16707 E. Happy Rd.	Dragoon Water Company
10	Queen Creek, AZ 85242	7459 E. Almeria Rd.
11		Scottsdale, AZ 85257
12	Dateland Public Service	
13	PO Box 3011	DS Water Company
14	Dateland, AZ 85333	PO Box 786
15		Desert Springs, AZ 86432
16	Dateland Water, LLC	
17	3412 W 2nd Street	Eagletail Water Company, L.C.
18	Anacortes, WA 98221	PO Box 576
19		Tonopah, AZ 85354
20	Dells Water Company	
21	PO Box 870	Eden Water Company, Inc.
22	Clarkdale, AZ 86324	9488 E. Hot Springs Rd.
23		Eden, AZ 85535
24	Desert Valencia Water System	
25	PO Box 1605	Ehrenberg Improvement Association
26	Idyllwild, CA 92549	dba Ehrenberg Water Co.
27		PO Box 50
28	Diablo Village Water Company	Ehrenberg, AZ 85334
29	c/o Thim Utility Company	
30	PO Box 13145	El Prado Water Company, Inc.
31	Tucson, AZ 85732	PO Box 5450
32		Yuma, AZ 85366
33	Diamond Valley Water Users Corporation	
34	PO Box 13070	Elfrida Domestic Water Users Association
35	Prescott, AZ 86304-3070	PO Box 356
36		Elfreda, AZ 85610
37	Diversified Water Utilities, Inc.	
38	4700 E. Thomas Rd., Ste. 203	Empirita Water Company, L.L.C.
39	Phoenix, AZ 850187703	2090 N. Kolb Rd., Ste. 120
40		Tucson, AZ 85715
41	Donald & Steven McAdams	
42	dba McAdams Water Company	Entrada Del Oro Sewer Company
43	10434 230th St.	11811 N. Tatum Blvd., Ste. 1060
44	Delta, IA 52550	Phoenix, AZ 85028
45		
46		

1 F. Wayne Thompson
2 and Dorothy Thompson
3 dba West Village Water Company
4 c/o Allen Ginsberg
5 1120 W. University Ave., Ste. 200
6 Flagstaff, AZ 86001
7
8 Far West Water & Sewer, Inc.
9 13157 E. 44th St.
10 Yuma, AZ 85367
11
12 Farmers Water Company
13 PO Box 7
14 Sahuarita, AZ 85629
15
16 Fisher's Landing Water and Sewer Works,
17 LLC
18 PO Box 72188
19 Yuma, AZ 85365
20
21 Flagstaff Ranch Water Company, Inc
22 PO Box 10775
23 Phoenix, AZ 85064
24
25 Fools Hollow Water Company
26 PO Box 484
27 Show Low, AZ 85902
28
29 Forest Highlands Water Company
30 657 Forest Highlands
31 Flagstaff, AZ 86001
32
33 Forrest G. & Alice W. Wilkerson
34 dba Verde Lee Water Company
35 PO Box 984
36 Clifton, AZ 85533
37
38 Fort Mohave Tribal Utilities Authority
39 8490 S. Highway 95
40 PO Box 5559
41 Mohave Valley, AZ 86440
42
43 Francesca Water Company, Inc.
44 PO Box 17991
45 Tucson, AZ 85731
46
47
48

Francisco Grande Utility Company
26000 Gila Bend Highway
Casa Grande, AZ 85222

Gadsden Water Company, Inc
PO Box 519
Somerton, AZ 85350

Global Water - Palo Verde Utilities Company
21410 N. 19th Ave., Ste. 201
Phoenix, AZ 85027

Global Water - Santa Cruz
21410 N. 19th Ave., Ste. 201
Phoenix, AZ 85027

Gold Canyon Sewer Company
12725 W. Indian School Rd., Ste. D101
Avondale, AZ 85323

Golden Corridor Water Company
c/o Arizona Water Co.
PO Box 29006
Phoenix, AZ 850389006

Golden Shores Water Co., Inc.
PO Box 37
Topock, AZ 86436

Goodman Water Company
6340 N. Campbell, Ste. 278
Tucson, AZ 85718

Graham County Utilities Inc - Water
PO Drawer B
Pima, AZ 85543

Grand Canyon Caverns and Inn, LLC
PO Box 180
Peach Springs, AZ 86434

Grandview Water Company, Inc.
11632 S. 194th Dr.
Buckeye, AZ 85326

Granite Dells Water Company
3025 N. Hwy 89
Prescott, AZ 86301

1 Granite Mountain Water Company Inc.
2 2465 Shane Dr.
3 Prescott, AZ 86305
4 Granite Oaks Water Users Association
5 PO Box 4947
6 Chino Valley, AZ 86323
7 Great Prairie Oasis
8 Sunland Water Company
9 PO Box 10450
10 Casa Grande, AZ 85230
11 Green Acres Water Company
12 PO Box 4995
13 Yuma, AZ 85366
14 Greenehaven Sewer Company, Inc.
15 PO Box 5122
16 Page, AZ 86040
17 Greenehaven Water Company Inc.
18 PO Box 5122
19 Page, AZ 86040
20 Groom Creek Water Users Association
21 4209 S. Adeline Dr.
22 Prescott, AZ 86303
23 H2O, Inc.
24 41502 N. Schnepf Rd.
25 Queen Creek, AZ 85242
26 Halcyon Acres Annex #2 Water Co. Inc.
27 8715 E. 20th St.
28 Tucson, AZ 85710
Halcyon Acres Water Users Association
PO Box 18448
Tucson, AZ 85731
Hassayampa Utilities Company, Inc.
21410 N. 19th Ave., Ste. 201
Phoenix, AZ 85028
Hatch Valley Water Company
PO Box 271
Peach Springs, AZ 86434

Heart Cab Co., Inc.
dba Sulger Water Company #2.
PO Box 580
Sierra Vista, AZ 85636

High Country Pines Water Company, Inc.
5555 N. 7th St., Ste. 134, PMB 342
Phoenix, AZ 85014

Hillcrest Water Company
915 E. Bethany Home Rd.
Phoenix, AZ 85014

Holiday Enterprises Incorporated
dba Holiday Water Company
PO Box 309
Tombstone, AZ 85638

Hopeville Water Company, Inc.
1415 S. Palo Verde Rd., Rt. 2
Buckeye, AZ 85326

Humboldt Water Systems, Inc.
PO Box 10593
Sedona, AZ 86339

ICR Water Users Association
PO Box 5669
Chino Valley, AZ 86323

Indiada Water Company, Inc.
301 N. Garden Ave
Sierra Vista, AZ 85635

J. D. Campbell
dba West End Water Company
9098 W. Pinnacle Peak Road
Peoria, AZ 85383

Jackson Spring Estates Home and Property
Owners Association
4439 E. Hobart
Mesa, AZ 85205

Janice E. Worden and Lawrence A. Worden
dba Worden Water Company
15150 W. Ajo, Ste. 568
Tucson, AZ 85735

1 Jaren Associates #1
2 dba James P. Water Company
3 4455 E. Camelback Rd., Ste. 215-A
4 Phoenix, AZ 85018
5
6 Johnson Utilities L.L.C.
7 dba Johnson Utilities Company
8 5230 E. Shea Blvd., Ste. 200
9 Scottsdale, AZ 85254
10
11 Joshua Valley Utility Company
12 PO Box 80070
13 Phoenix, AZ 85060
14
15 Kacy J. Parker
16 dba Jake's Corner Water System
17 HC6 Box 1048 H
18 Payson, AZ 85541
19
20 Kacy Parker
21 dba Arroyo Water Co.
22 HC6 Box 1048 L
23 Payson, AZ 85541
24
25 Katherine Resort Water Company
26 6126 Chrismark Ave.
27 San Diego, CA 92120
28
29 Keaton Development Company
30 PO Box 905
31 Salome, AZ 85348
32
33 Kohl's Ranch Water Company
34 2111 E. Highland Ave., Ste 200
35 Phoenix, AZ 85016
36
37 Kraus Investment LC
38 dba Shangri-La Ranch
39 44444 N. Shangri La Lane
40 New River, AZ 85087
41
42 Kylo Development Corporation
43 dba Bradshaw Mountain View Water Co
44 PO Box 10593
45 Sedona, AZ 86339
46
47
48

La Casita Water Company Inc.
PO Box 13208
Tucson, AZ 85732

Lago Del Oro Water Company
9532 E. Riggs Rd.
Sun Lakes, AZ 85248

Lagoon Estates Water Company
2600 N. 44th St., Ste. 203
Phoenix, AZ 85008

Lake Pleasant Sewer Company
2390 E. Camelback Rd., Ste. 310
Phoenix, AZ 85016

Lake Pleasant Water Company
2390 E. Camelback Rd., Ste. 310
Phoenix, AZ 85016

Lake Verde Water Company
PO Box 2777
Camp Verde, AZ 86322

Las Quintas Serenas Water Company
PO Box 68
Sahuarita, AZ 85629

Lazy C Water Service
PO Box 1
Tucson, AZ 85702

Litchfield Park Service Company
12725 W. Indian School Rd., Ste. D101
Avondale, AZ 85323

Litchfield Park Service Company - Sewer
12725 W. Indian School Rd., Ste. D101
Avondale, AZ 85323

Little Park Water Company
45 Castle Rock Rd #4
Sedona, AZ 86351

Livco Sewer Company
PO Box 659
Concho, AZ 85924

1	Livco Water Company	Michael W. Schultz & Pamela J. Schultz
2	PO Box 659	dba Rincon Creek Water Company
3	Concho, AZ 85924	14545 E Rincon Creek Ranch Rd
4	Loma Estates Water Co.	Tucson, AZ 85747
5	11620 Bella Sierra Trl	Michaels Ranch Water Users' Association
6	Prescott, AZ 86305	1 Michaels Ranch Rd
7	Loma Linda Estates, Inc.	Sedona, AZ 86336
8	dba Loma Linda Water Company	Mirabell Water Company, Inc.
9	PO Box 967	1037 S. Alvernon, Ste. 250
10	Thatcher, AZ 85552	Tucson, AZ 85711
11	Lord Arizona Water Systems Inc.	Mobile Water Company
12	2961 E. Cooley	Attn: Mr. Garth Wiegner
13	Show Low, AZ 85901	6720 N Scottsdale Rd, Ste 335
14	Los Cerros Water Co., Inc.	Scottsdale, AZ 85253
15	4003 N. Flowing Wells Road	Mohawk Utility Company
16	Tucson, AZ 85705	36140 Antelope Dr.
17	Lucky Hills Water Company	Wellton, AZ 85356
18	PO Box 309	Monte Vista Water Co., L.L.C.
19	Tombstone, AZ 85638	4762 N. Rustler Place
20	Lyn Lee Water	Douglas, AZ 85607
21	2321 W. Catalpa	Montezuma Rimrock Water Company, LLC
22	Tucson, AZ 85741	PO Box 10
23	Martinez Lake Sewer Company	Rimrock, AZ 86335
24	10430 N. Martinez Lake Rd.	Morenci Water and Electric Company
25	Yuma, AZ 85365	PO Box 68
26	Meadow Water Company	Morenci, AZ 85540
27	PO Box 3937	Mormon Lake Water Co.
28	Prescott, AZ 86302	PO Box 29041
	Mescal Lakes Water Systems Inc.	Phoenix, AZ 85038
	PO Box 85160	Morristown Water Company
	Tucson, AZ 85754	PO Box 156
	MHC Operating Limited Partnership	Morristown, AZ 85342
	dba The Sedona Venture Wastewater	Mount Tipton Water Co., Inc.
	Treatment Plant	PO Box 38
	c/o Manufactured Home Communities, Inc.	Dolan Springs, AZ 86441
	2 N. Riverside Plaza, Ste 800	
	Chicago, IL 60606	

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|----|--|--|
| 1 | Mountain Dell Water, Inc.
1341 W. Palmer Ave.
Flagstaff, AZ 86001 | Oak Creek Water Co., No 1
90 Oak Creek Blvd
Sedona, AZ 86336 |
| 3 | Mountain Glen Water Service
PO Box 897
Clay Springs, AZ 85923 | Oatman Water Company, L.L.C.
9184 N. 81st Street
Scottsdale, AZ 85258 |
| 6 | Mountain Pass Utility Company
9532 E. Riggs Rd
Sun Lakes, AZ 85248 | Orange Grove Water Company
PO Box 889
Yuma, AZ 85366 |
| 8 | MWC, Inc.
PO Box 12776
Ft. Huachuca, AZ 85670 | Park Valley Water Company, Inc.
PO Box 487
Show Low, AZ 85902 |
| 10 | Naco Water Company, L.L.C.
PO Box 85160
Tucson, AZ 85754 | Park Water Company, Inc.
PO Box 16173
Phoenix, AZ 85011 |
| 13 | Narvol D. Bales
dba Sunizona Water Company
5416 E. Hwy 181
Pearce, AZ 85625 | Parker Lakeview Estates Homeowners
Association Inc.
dba Parker Springs Water Company
HC 2, Box 193
Patagonia, AZ 85624 |
| 16 | Navajo Water Co., Inc.
PO Box 82218
Bakersfield, CA 93380 | Payson Water Co., Inc.
PO Box 82218
Bakersfield, CA 93380 |
| 18 | New River Utilities Company
7839 W Deer Valley Rd
Peoria, AZ 85382 | Peebles Valley Water Company
15811 N. 9th Ave.
Phoenix, AZ 85023 |
| 20 | North Mohave Valley Corporation
PO Box 22495
Bullhead City, AZ 86439-2495 | Peter O'Crotty
dba Despoblado Water Company
8815 N Verch Way
Tucson, AZ 85737 |
| 22 | Northern Sunrise Water Company
12725 W. Indian School Rd., Ste. D-101
Avondale, AZ 85323 | Picacho Peak Water Company
28784 Stonehenge Dr.
Chesterfield, MI 48047 |
| 25 | Oak Creek Public Service, LLC
PO Box 103
Cornville, AZ 86325 | Picacho Sewer Company
9532 E. Riggs Rd
Sun Lakes, AZ 85248 |
| 27 | Oak Creek Utility Corporation
PO Box 48
Cave Creek, AZ 85327 | |

1	Picacho Water Company	Q Mountain Mobile Home Park
2	9532 E. Riggs Rd.	PO Box 4930
3	Sun Lakes, AZ 85248	Quartzsite, AZ 85359
4	Picacho Water Improvement	Q Mountain Water Inc.
5	PO Box 44	12486 S. Foothills Blvd.
6	Picacho, AZ 85421	Yuma, AZ 85367
7	Pima Utility Company (Sewer)	Quail Creek Water Company
8	9532 E. Riggs Rd.	9532 E. Riggs Rd.
9	Sun Lakes, AZ 85248	Sun Lakes, AZ 85248
10	Pima Utility Company (Water)	Queen Creek Water Company
11	9532 E. Riggs Rd.	22713 S. Ellsworth Rd., Bldg. A
12	Sun Lakes, AZ 85248-7411	Queen Creek, AZ 85242
13	Pine Meadows Utilities, LLC	Rainbow Parks, Inc.
14	6825 E Tennessee Ave., Ste 547	dba Escapees at North Ranch
15	Denver, CO 80224	100 Rainbow Dr.
16	Pine Valley Water Company	Livingston, TX 77351
17	480 Raintree Rd	Rancheros Bonitos Water Co., L.L.C.
18	Sedona, AZ 86351	14550 S. Avenue 4E
19	Pine Water Co., Inc.	Yuma, AZ 85365
20	c/o Brooke Utilities, Inc.	Rancho Del Conejo Community Water Co-
21	PO Box 82218	Op, Inc.
22	Bakersfield, CA 93380	13130 W. Rudasill Rd
23	Pinecrest Water Company	Tucson, AZ 85743
24	PO Box 97	Rancho Sahuarita Water Company L.L.C.
25	Nutrioso, AZ 85932	4549 E. Fort Lowell Rd.
26	Pineview Water Co	Tucson, AZ 85712
27	5198 Cub Lake Rd.	Ray Water Company
28	Show Low, AZ 85901	414 N. Court
	Ponderosa Utility Corporation	Tucson, AZ 85701
	3A Osage St	Red Rock Utilities, LLC
	Flagstaff, AZ 86001	PO Box 70108
	Pueblo Del Sol Water Company	Tucson, AZ 85737
	4226 Avenida Cochise, Ste 13	Ridgeview Utility Company
	Sierra Vista, AZ 85635	9532 E. Riggs Rd
	Puesta Del Sol Water Company	Sun Lakes, AZ 85248
	2732 W. Glendale Ave.	
	Phoenix, AZ 85051	

1 Rigby Water Company
PO Box 1020
2 Apache Junction, AZ 85217-1020
3
4 Rillito Water Users Association
PO Box 668
Rillito, AZ 85654
5
6 Rincon Ranch Estates Water Company
3750 South Old Spanish Trail
Tucson, AZ 85730
7
8 Rincon Water Company
HC #70 Box 3601
9 Sahuarita, AZ 85629
10
11 Rio Rico Utilities Inc.
12725 W. Indian School Rd., Ste. D101
Avondale, AZ 85392
12
13 Rio Verde Utilities
25609 Danny Lane, Ste 1
Rio Verde, AZ 85263
14
15 Roosevelt Lake Resort, Inc.
HCO 2, Box 901
16 Roosevelt, AZ 85545
17
18 Rose Valley Water Company
Gary Brasher
PO Box 1444
19 Green Valley, AZ 85622
20
21 Sabrosa Water Company
c/o Town of Cave Creek
One Arizona Center
22 400 E. Van Buren St., Ste. 800
Phoenix, AZ 85004
23
24 Saddlebrooke Utility Company
9532 E. Riggs Rd.
Sun Lakes, AZ 85248
25
26 Saguaro Water Company
4572 E. Camp Lowell Dr.
27 Tucson, AZ 85712
28

Sandario Water Company
PO Box 85160
Tucson, AZ 85754

Santa Rosa Utility Company
9532 E. Riggs Rd
Sun Lakes, AZ 85249

Santa Rosa Water Company
9532 E. Riggs Rd
Sun Lakes, AZ 85248

Seven Canyons Water Company
15333 N. Pima Rd., Ste. 305
Scottsdale, AZ 85260

Seven Canyons Water Treatment Company
15333 N. Pima Rd., Ste. 305
Scottsdale, AZ 85260

Shepard Water Company
10430 N. Martinez Lake Rd.
Yuma, AZ 85365

Sitgreaves Water Company
2961 E. Cooley
Show Low, AZ 85901

Sleepy Hollow Mobile Home Estates
6001 S. Palo Verde
Tucson, AZ 85706

Sonoita Valley Water Company
2102 N. Forbes, Ste. 107
Tucson, AZ 85745

South Rainbow Valley Water Coop.
27205 S. 170th Ave.
Buckeye, AZ 85326

Southern Sunrise Water Company
12725 W. Indian School Rd., Ste. D101
Avondale, AZ 85323

Southland Sanitation, Co.
2730 E. Broadway, Ste 135
Tucson, AZ 85716

1	Southland Utilities Company, Inc. 2730 E. Broadway, Ste 135 Tucson, AZ 85716	Sunrise Utilities, L.L.C. PO Box 3630 Mesquite, NV 89024
3	Spanish Trail Water Co. 2200 E. River Rd., Ste 115 Tucson, AZ 85718	Sunrise Vistas Utilities Company PO Box 8555 Ft. Mohave, AZ 86427
5	Spring Branch Water Company, Inc. 1223 S. Clearview Ave., Ste. 103 Mesa, AZ 85209	Sunrise Water Company 9098 W. Pinnacle Peak Rd. Peoria, AZ 85383
8	St. David Springs, L.L.C. 1600 N. Kolb Rd., Ste. 118 Tucson, AZ 85715	Sweetwater Creek Utilities, Inc. 6825 E. Tennessee Ave, Ste 547 Denver, CO 80224
10	Starlight Water Company, Inc. PO Box 1842 Wenatchee, WA 98807	Tacna Water Company 2993 S. Arizona Ave Yuma, AZ 85365
12	Sterling Water Company 2925 N. Manor Dr. E. Phoenix, AZ 85014	Tall Pine Estates Water & Improvements Association, Inc. HC 31 Box 25 Mormon Lake, AZ 86038
15	Stoneman Lake Water Company, Inc. 7250 E. Gray St. Mesa, AZ 85207	The Burlington Northern and Santa Fe Railway Company dba Aubrey Water Company PO Box 961050 Ft. Worth, TX 76161
17	Strawberry Water Co., Inc. PO Box 82218 Bakersfield, CA 93380	The Links at Coyote Wash Utilities, LLC 6825 E. Tennessee Ave., Ste. 547 Denver, CO 80224
19	Strawberry Water Company 203A W. Airport Rd Payson, AZ 85541	Thim Utility Co. PO Box 13145 Tucson, AZ 85732
22	Sue Juan Water Company 10570 S. Nogales Hwy Tucson, AZ 85706	Thim Water Corporation PO Box 13145 Tucson, AZ 85732
24	Sun Leisure Estates Utilities Company, Inc. c/o Crites & Associates PO Box 5681 Yuma, AZ 85366	Tierra Buena Water Company 12540 W. Bethany Home Litchfield Park, AZ 85340
26	Sun Valley Farms-Unit VI Water Company 3698 E. Hash Knife Draw Rd Queen Creek, AZ 85242	

1 Tierra Linda Homeowners Association, Inc.
2 6262 N. Swan Rd, Ste. 125
3 Tucson, AZ 85718

4 Tierra Mesa Estates Water Company, Inc.
5 PO Box 4893
6 Yuma, AZ 85366

7 Timber Knoll Homeowners Association, Inc.
8 dba T.K. Water Service
9 PO Box 200
10 Vernon, AZ 85940

11 Tonto Basin Water Co., Inc.
12 c/o Brooke Utilities, Inc.
13 PO Box 82218
14 Bakersfield, CA 93380

15 Tonto Creek Utility Co.
16 HC 2 Box 94-G
17 Payson, AZ 85541

18 Tonto Hills Utility Company
19 11802 E. Blue Wash Rd
20 Cave Creek, AZ 85331

21 Tonto Village Water Company, Inc.
22 dba Tonto Village Water Company
23 PO Box 9116
24 Mesa, AZ 85214

25 Tortolita Water Co., Inc.
26 3567 E. Sunrise Dr., Ste 119
27 Tucson, AZ 85718

28 Truxton Canyon Water Company, Inc.
2409 Ricca Dr
Kingman, AZ 86401

Tubac Water Company, Inc.
ATTN: John Crowley
1444 Wazee St., Ste. 350
Denver, CO 80202

Turner Ranches Water & Sanitation, Co.
PO Box 1020
Apache Junction, AZ 85217-1020

Tusayan Water Development Assoc., Inc.
c/o Quality Inn
PO Box 520
Grand Canyon, AZ 86023

Twin Hawks Utility, Inc.
PO Box 70022
Tucson, AZ 85737

Utility Source, L.L.C.
721 E. San Pedro
Gilbert, AZ 85234

Utility Systems, LLC
HC 2 Box 164-H
Payson, AZ 85541

Vail Water Company
1010 N. Finance Center Dr., Ste 200
Tucson, AZ 85710

Valencia Water Company Inc.
21410 N. 19th Ave., Ste. 201
Phoenix, AZ 85027

Valle Verde Water Company
12 Garden View Dr.
Nogales, AZ 85621

Valley Pioneer's Water Company, Inc.
5998 W. Chino Dr.
Golden Valley, AZ 86413

Valley Utilities Water Co., Inc.
6808 N. Dysart Rd., Ste. 112
Glendale, AZ 85307

Valley View Water Company Inc.
10030 W. McDowell Rd., Ste. 150-402
Avondale, AZ 85392

Verde Lakes Water Corporation
2867 S. Verde Lakes Dr. #B
Camp Verde, AZ 86322

Verde Santa Fe Wastewater Co, Inc.
6825 E Tennessee Ave, Ste 547
Denver, CO 80224

1 Virgin Mountain Utilities Company
PO Box 668
2 Beaver Dam, AZ 85432
3
4 Viva Development Corporation
PO Box 12863
Tucson, AZ 85732
5
6 Voyager at White Mountain Lakes Water
Company, Inc.
1993 Juniper Ridge Resort
7 Show Low, AZ 85901
8
9 Voyager Water Company
8701 S. Kolb Rd
Tucson, AZ 85706
10
11 Walden Meadows Community Co-Op
9325 Donegal Dr., Ste. A
12 Wilhoit, AZ 86332
13
14 Walnut Creek Water Company, Inc.
119 E. Andy Devine Ave.
Kingman, AZ 86401
15
16 WATCO, Inc.
PO Box 1270
Show Low, AZ 85902
17
18 Water Utility of Greater Buckeye, Inc.
21410 N. 19th Ave., Ste. 201
19 Phoenix, AZ 85027
20
21 Water Utility of Greater Tonopah, Inc.
21410 N 19th Ave., Ste. 201
Phoenix, AZ 85027
22
23 Water Utility of Northern Scottsdale, Inc.
21410 N. 19th Ave., Ste. 201
Phoenix, AZ 85027
24
25 White Horse Ranch Owners Association, Inc.
PO Box 670
Dewey, AZ 863270660
26
27 White Mountain Water Company
PO Box 1760
28 Payson, AZ 85547

Why Utility Company, Inc.
PO Box 69
Ajo, AZ 85321

Wickenburg Ranch Water, L.L.C.
c/o M3 Builders
4222 East Camelback H100
Phoenix, AZ 86018

Wilhoit Water Company, Inc.
PO Box 870
Clarkdale, AZ 85324

William F. Lesko
Heckethorn Water Company
4400 E. Button Lane
Flagstaff, AZ 86001

William P. Farr
Salome Water Company
P.O. Box 550
Salome, AZ 85348

Willow Lakes Property Owners Assoc., Inc.
PO Box 875
Benson, AZ 85602

Willow Springs Utilities, L.L.C.
1600 E. Hanley Blvd., Ste. 128
Oro Valley, AZ 85737

Willow Valley Water Company, Inc.
21410 N. 19th Ave., Ste. 201
Phoenix, AZ 85027

Winchester Water Company, L.L.C.
7616 N. La Cholla Blvd.
Tucson, AZ 85741

Winslow West Water Company Inc.
PO Box 3339
Scottsdale, AZ 85271

Woodruff Utility Company, Inc.
2555 E. Camelback Rd., Ste. 700
Phoenix, AZ 85016

1 Woodruff Water Company, Inc.
2 2555 E. Camelback Rd., Ste. 700
3 Phoenix, AZ 85016

4 Woody's Enterprises, LTD
5 dba Ho-Tye Water Company
6 580 W. Wickenburg Way
7 Wickenburg, AZ 85390

8 Yarnell Water Improvement Association, Inc.
9 PO Box 727
10 Yarnell, AZ 85362

11 Yucca Water Association, Inc.
12 PO Box 575
13 Yucca, AZ 86438

14 Mr. Ernest G. Johnson
15 Director, Utilities Division
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

19 Mr. Christopher C. Kempley
20 Chief Counsel
21 Arizona Corporation Commission
22 1200 West Washington
23 Phoenix, Arizona 85007

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**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATIONS**

CHAPTER 2. CORPORATIONS COMMISSION FIXED UTILITIES

ARTICLE 4. WATER UTILITIES

Section

R14-2-402. Certificate of Convenience and Necessity for water utilities; ~~abandonments~~

ARTICLE 6. SEWER UTILITIES

Section

R14-2-602. Certificate of Convenience and Necessity for sewer utilities; ~~additions/extensions;~~
~~abandonments~~

ARTICLE 4. WATER UTILITIES

R14-2-402. Certificate of Convenience and Necessity for water utilities; ~~abandonments~~

A. For purpose of this rule, "contiguous" is defined with its common, ordinary and approved meaning: In actual close contact; touching; bounded or traversed by.

~~A.B.~~ Application for new Certificate of Convenience and Necessity or extension of Certificate of Convenience and Necessity

1. Any person or entity who desires to construct and/or operate a water utility will, prior to commencement of construction of utility facilities, file an application for a Certificate of Convenience and Necessity with the Arizona Corporation Commission.
2. ~~Six copies of each~~ Each application for a new Certificate of Convenience and Necessity or extension of a Certificate of Convenience and Necessity shall be submitted in a form and number prescribed by the Commission and shall include, at a minimum, the following information:

- a. The proper name and correct address of the proposed utility company and its owner, if a sole proprietorship, each partner if a partnership, ~~or~~ the President and Secretary if a corporation, or its managers(s) and/or members of the L.L.C. (if management is reserved to the members) if an L.L.C.
- b. A copy of the applicant's Articles of Partnership or Articles of Incorporation ~~for the applicant~~ and/or Bylaws if the utility is a non-profit organization or association or Articles of Organization if the utility is an L.L.C. for a new Certificate of Convenience and Necessity or the applicant's Certificate of Good Standing for an extension.
- e. ~~The type of plant, property, or facility proposed to be constructed.~~
- ~~d.c.~~ A complete description of the facilities proposed to be constructed, including a preliminary engineering report with specifications in sufficient detail to properly describe the principal systems and components ~~which meet the requirements of the health department. Final and complete engineering specifications shall be supplied when they become available (e.g. source, storage, transmission lines, distribution lines, etc.) in order to verify the costs submitted as part of R14-2-402(B)(2)(d) and to verify that the requirements of the Commission and the Arizona Department of Environmental Quality can be met.~~
- d. The estimated total construction cost of the proposed off-site and on-site plant facilities, including documentation to support the estimates, and an explanation of how the construction will be financed, such as, but not limited to debt, equity, advances in aid of construction or contributions in aid of construction.

- e. ~~The rates proposed to be charged for the service that will be rendered.~~ The financial condition of the applicant.
- f. ~~The estimated total cost of the proposed construction.~~ The rates proposed to be charged for the service that will be rendered.
- g. ~~The manner of capitalization and method of financing for the project.~~
- h. ~~The financial condition of the applicant.~~
- i.g. ~~The estimated annual operating revenues and expenses that are expected to accrue from the proposed construction~~ for the first five years of operation, including assumptions made to derive the estimates.
- j.h. ~~The estimated starting and completion date of the proposed construction.~~ If construction is to be phased, the phases shall be described in detail.
- i. A copy of any requests for service for the area under application with the requested water service provider identified.
- k.j. Maps of the proposed service area identifying:
 - i. The boundaries of the area under application with the total acreage noted.
 - ii. Land ownership boundaries indicating the acreage of each parcel within the area under application if the area under application is comprised of two or more parcels that are owned by different parties.
 - iii. The owner of each parcel comprising the area under application.
 - iv. The corporate limits of any city or town that cross or are within five miles of the area under application.

- v. The service territory of any public service corporation, municipality or district currently providing water or wastewater service within one mile of the area under application, the name of any such entity and type(s) of service(s) being provided.
- vi. The location of any known water service connections within the area under application.
- vii. The location of all proposed developments for the area under application.
- viii. The proposed location of all principal systems and components described in R14-2-402(B)(2)(c).
- ix. The location of all parcels for which a copy of a request for service has been provided per R14-2-402(B)(2)(i).
- k. A copy of applicant's notice to the municipal manager or administrator of each entity in R14-2-402(B)(2)(j)(iv).
- l. ~~Appropriate city, county and/or state agency approvals.~~
- l. A copy of the applicant's notice of the application to all the landowners in the area under application who did not request service.
- m. ~~The estimated number of customers to be served for each of the first five years of operation, including documentation to support the estimates.~~
- m. The written response to the notice from each landowner who did not request service.
- n. If a landowner did not respond to the notice of the application, the application shall include a description of the action taken by the applicant to obtain a written response from the land owner.
- o. Appropriate city, county and/or state agency approvals.

- p. The estimated number of customers to be served for each of the first five years of operation, including documentation to support the estimates.
- q. The name of the wastewater service provider in the area under application along with a letter from the wastewater service provider confirming the provision of such service and a description of how the applicant will work with the wastewater service provider to encourage water conservation, including promoting the use of reclaimed water.
- r. A description of how water will be provided for golf courses, ornamental lakes, other aesthetic water features, greenbelts, or parks within the area under application.
- s. Plans or description of water conservation measures. Such plans shall include, at a minimum, the following: (1) a description of the information about water conservation or water saving measures that the utility provides to the public and its customers; (2) a description of the sources of water that will be used to supply parks, recreation areas, golf courses, greenbelts, ornamental lakes, and other aesthetic features; (3) a description of plans for the use of reclaimed water; (4) a description of plans for the use of recharge wells; (5) a description of plans for the use of surface water; (6) a description of any other plans or programs in place to promote water conservation.
- t. Backflow prevention tariff, if not already on file.
- u. Curtailment tariff, if not already on file.
- v. Physical Availability Determination, Analysis of Adequate Water Supply, or Analysis of Assured Water Supply from the Arizona Department of Water Resources or, in the alternative, the status of the application.

w. For applications for extensions of Certificate of Convenience and Necessity, the applicant shall also submit:

i. A current compliance status report from the Arizona Department of Environmental Quality. This status report shall be dated no more than 30 days before the filing date of the application for extension.

ii. A water use data sheet for the existing system(s). A separate water use data sheet, identified by the Arizona Department of Environmental Quality Public Water System Identification Number, shall be submitted for each separate water system.

3. Upon the receipt of such application, the Commission staff of the Utilities Division shall review the application for compliance with the information requirements of this regulation; additional information, amendments and/or corrections to the application to bring the application into compliance with this regulation shall be governed by the Commission's rules of administrative and hearing requirements concerning incomplete applications.
4. Once the applicant has satisfied the information requirements of this regulation, as well as any additional information required by the staff of the Commission's Utilities Division, the Commission shall, as expeditiously as reasonably practicable, schedule hearings to consider such application.

B.C. Application for discontinuance or abandonment of utility service

1. Any utility proposing to discontinue or abandon utility service currently in use by the public shall prior to such action obtain authority therefore from the Commission.

2. The utility shall include in the application, studies of past, present and prospective customer use of the subject service, plant or facility as is necessary to support the application.
3. An application shall not be required to remove individual facilities where a customer has requested service discontinuance.

C.D. Additions/ or extensions of service contiguous to ~~outside~~ existing Certificates of Convenience and Necessity

1. Each utility which proposes to extend utility service to a location parcel not within its certificated service area, but located in a non-certificated area contiguous to its certificated service area, shall prior to the extension of service, notify the Commission of such service extension. Such notifications shall be in writing and shall be verified and shall set forth, at a minimum, the number of persons or entities proposed to be served by such service extension, their location in relation to the certificated area of the utility and a statement of the utility that the service extension is to a non-certificated area parcel which is contiguous to its certificated area. Where emergency service is required to be provided to a customer in a non-certificated area contiguous to the utility certificated area the utility shall advise the Commission simultaneously of such extension and the written notification shall set forth the nature and extent of the emergency.
2. ~~For purpose of this rule the following definition of "contiguous" is: Contiguous—~~
~~Common, ordinary and approved meaning. In actual close contact, touching, bounded or~~
~~traversed by.~~

ARTICLE 6. SEWER UTILITIES

R14-2-602. Certificate of Convenience and Necessity for sewer utilities; additions/extensions; abandonments

A. For purpose of this rule, "contiguous" is defined with its common, ordinary and approved meaning: In actual close contact; touching; bounded or traversed by.

~~A.B.~~ Application for new Certificate of Convenience and Necessity or extension of Certificate of Convenience and Necessity

1. Any person or entity who desires to construct and/or operate a sewer utility will, prior to commencement of construction of utility facilities, file an application for a Certificate of Convenience and Necessity with the Arizona Corporation Commission.
2. ~~Six copies of each~~ Each application for a new Certificate of Convenience and necessity or extension of a certificate of Convenience and Necessity shall be submitted in a form and number prescribed by the Commission and shall include, at a minimum, the following information:
 - a. The proper name and correct address of the proposed utility company and its owner, if a sole proprietorship, each partner if a partnership, ~~or~~ the President and Secretary if a corporation, or its managers(s) and/or members of the L.L.C. (if management is reserved to the members) if an L.L.C.
 - b. A copy of the applicant's Articles of Co-Partnership or Articles of Incorporation ~~for the applicant~~ and/or Bylaws if the utility is a non-profit organization or association, or Articles of Organization if the utility is an L.L.C. for a new Certificate of

Convenience and Necessity or the applicant's Certificate of Good Standing for an extension.

- e. ~~The type of plant, property, or facility proposed to be constructed.~~
- d. c. A complete description of the facilities proposed to be constructed, including a preliminary engineering report with specifications in sufficient detail to properly describe the principal systems and components and final and complete engineering specifications when they become available (e.g., collection mains, trunk lines, lift stations, treatment plants, effluent disposal areas, etc.) in order to verify the costs submitted as part of R14-2-602(B)(2)(e) and to verify that the requirements of the Commission and the Arizona Department of Environmental Quality can be met.
- d. A copy of the Aquifer Protection Permit issued by the Arizona Department of Environmental Quality for the proposed area or, in the alternative, the status of the application for the Aquifer Protection Permit.
- e. ~~The rates proposed to be charged for the service that will be rendered because of the proposed construction.~~ The estimated total construction cost of the proposed off-site and on-site plant facilities, including documentation to support the estimates, and an explanation of how the construction will be financed, such as, but not limited to debt, equity, advances in aid of construction or contributions in aid of construction.
- f. ~~The estimated total cost of the proposed construction.~~
- g. ~~The manner of capitalization and method of financing for the project.~~
- h. f. The financial condition of the applicant.
- g. The rates proposed to be charged for the service that will be rendered.

- i.h. The estimated annual operating revenues and expenses that are expected to accrue from the proposed construction for the first five years of operation, including assumptions made to derive the estimates.
- j.i. The estimated starting and completion date of the proposed construction. If construction is to be phased, the phases shall be described in detail.
- j. A copy of any request for service for the area under application with the requested wastewater service provider identified.
- k. Maps of the proposed service area- identifying:
 - i. The boundaries of the area under application with the total acreage noted.
 - ii. Land ownership boundaries indicating the acreage of each parcel within the area under application if the area under application is comprised of two or more parcels that are owned by different parties.
 - iii. The owner of each parcel comprising the area under application.
 - iv. The corporate limits of any city or town that cross or are within five miles of the area under application.
 - v. The service territory of any public service corporation, municipality or district currently providing water or wastewater service within one mile of the area under application, the name of any such entity and the type(s) of service(s) it is providing.
 - vi. The location of any known sewer service connections within the area under application.
 - vii. The location of all proposed developments for the area under application.

viii. The proposed location of all principal systems and components described in R14-2-602(B)(2)(c).

ix. The location of all parcels for which a copy of a request for service has been provided per R14-2-602(B)(2)(j).

h. ~~Appropriate city, county and/or state agency approvals.~~

l. A copy of the applicant's notice to the municipal manager or administrator of each entity in R14-2-602(B)(2)(k)(iv) of the application to all the landowners in the area under application who did not request service.

m. ~~Estimated number of customers to be served for the first five years of operation, including documentation to support the estimates.~~

m. The written response to the notice from each landowner in the area under application who did not request service.

n. Appropriate city, county and/or state agency approvals.

o. Estimated number of customers to be served for the first five years of operation, including documentation to support the estimates.

p. The name of the water service provider in the area under application.

q. A description of how effluent from the area under application will be reused, or if not reused, a description of the disposition of the effluent.

r. For applications for an extension of a Certificate of Convenience and Necessity, the applicant shall also submit.

i. A current compliance status report from the Arizona Department of Environmental Quality. This status report shall be dated no more than 30 days before the filing date of the application for extension.

ii. A wastewater flow data sheet for the existing system(s).

3. Upon the receipt of such application, the Commission staff shall review the application for compliance with the information requirements of this regulation; additional information, amendments and/or corrections to the application to bring the application into compliance with this regulation shall be governed by the Commission's rules of administrative and hearing requirements concerning incomplete applications.
4. Once the applicant has satisfied the information requirements of this regulation, the Commission shall, as expeditiously as reasonably practicable, schedule hearings to consider such application.

B.C. Additions/ or extensions of service contiguous to existing Certificates of Convenience and Necessity. Each utility which proposes to extend utility service to a ~~person~~ parcel not located within its certificated service area, but located in a non-certificated area contiguous to its certificated service area, shall, prior to the extension of service, notify the Commission of such service extension. Such notification shall be in writing and shall be verified and shall set forth, at a minimum, the number of persons or entities proposed to be served by such service extension, their location in relation to the certificated area of the utility and a statement of the utility that the service extension is to a non-certificated ~~area~~ parcel which is contiguous to its certificated area. Where emergency service is required to be provided to a customer in a non-certificated area contiguous to the utility certificated area, the utility shall advise the Commission simultaneously of such extension and the written notification shall set forth the nature and extent of the emergency.

C.D. Application for authority to abandon, sell, lease, transfer, or otherwise dispose of a utility.

Any utility proposing to sell, lease, transfer, or otherwise dispose of the utility shall, prior to

such sale, lease, transfer, or other disposal, file an application for authority to do so including the following information:

1. The address of the applicant.
2. A description of the utility property proposed to be abandoned, sold, leased, transferred or otherwise disposed of.
3. The financial condition of the applicant.
4. The name of the purchaser, lessee or assignee.
5. The terms and conditions of the proposed abandonment, sale, lease, or assignment and copies of any agreement which has been or will be executed concerning the same.
6. The effect of the proposed transaction upon the service of the applicant.
7. The method by which the proposed transaction is to be financed.
8. The effect the proposed transaction will have on any other utility and, if so, in what respect.

D-E. Application for discontinuance or abandonment of utility service

1. Any utility proposing to discontinue or abandon any type of utility service currently in use by the public shall prior to such action obtain authority therefore from the Commission.
2. The utility shall include in the application, studies of past, present and prospective customer use of the subject service plant or facility as is necessary to support the application.
3. An application shall not be required to remove individual facilities where a customer has requested service discontinuance.

EXHIBIT 2

ENCOURAGING CONSERVATION BY ARIZONA'S PRIVATE WATER COMPANIES: A NEW ERA OF REGULATION BY THE ARIZONA CORPORATION COMMISSION

Kris Mayes*

I. THE ARIZONA CORPORATION COMMISSION: AN INTRODUCTION

A. Private Water Companies and Growth: Managing Complexity

The Arizona Corporation Commission ("Commission") has both constitutional and statutory authority to regulate Arizona's public service corporations, including the approximately 350 private water companies currently serving an estimated 400,000 customers in the state.¹ Article 15, section 2, of the Arizona Constitution specifically mandates that water companies are to be among those shepherded by the Commission.²

With as many as 12,000 people moving to Arizona each month—9,400 per month to Maricopa County alone—ensuring the long-term availability of water

* Arizona Corporation Commissioner. This Article is a revised version of a paper originally presented at the Water Law and Policy Conference hosted by the University of Arizona James E. Rogers College of Law in Tucson, Arizona, on October 6–7, 2006. Articles from the Conference are collected in this symposium issue, Volume 49 Number 2, of the *Arizona Law Review*.

1. Interview with Commission Staff, including Steve Olea, Assistant Dir., Utils. Div., Ariz. Corp. Comm'n, in Phoenix, Ariz. (Oct. 2005).

2. The Arizona Constitution defines "public service corporations" as follows:
All corporations other than municipal engaged in furnishing gas, oil or electricity for light fuel or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or engaged in collecting transporting, treating, purifying and disposing of sewage through a system, for profit; or in transmitting messages or in furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers, shall be deemed public service corporations.

ARIZ. CONST. art. 15, § 2.

for all residents has become increasingly important.³ The Commission uses a number of tools to encourage or mandate water conservation. These tools include the use of Orders Preliminary for water companies outside an Active Management Area to require that companies prove up adequate water supplies prior to receiving a Certificate of Convenience and Necessity ("CC&N"); a preference for integrated wastewater and water utilities in order to maximize the potential for the use of reclaimed water in common areas, golf courses, and ornamental water features; measures to encourage the consolidation of small water companies, particularly those in growing areas prone to shortages; curtailment tariffs, now required of all water companies; tiered water rates, which are also now established in rate cases; and the use, when necessary, of hook-up moratoriums.

However, as the state struggles to match water supplies with its booming population and ensure reliable water delivery to future generations, the Commission will need to expand its efforts at conservation into uncharted areas. This will likely include allowing for recovery in rates of the costs associated with specific conservation measures that are soon to be required by the Arizona Department of Water Resources ("ADWR"); pinpointing small distressed water companies that are suffering high water loss rates or otherwise providing substandard service and utilizing rate premiums or acquisition adjustments to encourage their consolidation into larger entities; and working more closely with executive branch agencies to facilitate the aggressive institution of conservation measures at all of the state's private water systems. The combination of a broad network of water companies under its watch and the growing demands on Arizona's water supplies requires creative oversight by the Commission. In the face of such complexity, the Commission should continue to use its plenary powers as the regulator of private water companies to mitigate the effects of growth on water supplies and to help ensure the long-term availability of Arizona's most precious resource.

B. A Brief History of the Commission's Broad Mandate

Established at statehood as a popularly elected branch of state government, the Commission was originally composed of three commissioners. It was expanded by popular vote to five commissioners in 2000. The Commission was intended by the state's founding fathers to be a bulwark for consumers against the power of the large corporations that dominated commerce at the turn of the century.⁴

In addressing various challenges to the Commission's authority, courts have largely upheld the Commission's jurisdiction over public service corporations. The courts most often note the Commission's broad powers as suggested by the language of the primary constitutional provision, article 15, section 3, of the Arizona Constitution:

3. See Jon Kamman, *County Gained 313 People a Day Since 2000*, ARIZ. REPUBLIC, June 27, 2006, at B1.

4. See THE RECORDS OF THE CONSTITUTIONAL CONVENTION OF 1910, at 614, 970 (John S. Goff ed., 1991); *Ariz. Corp. Comm'n v. Woods*, 830 P.2d 807, 811-13 (Ariz. 1992) (detailing the constitutional origins of the Commission).

The Corporation Commission shall have full power to, and shall, prescribe . . . just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms and contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations⁵

Two years after enactment of the constitution, the Arizona Supreme Court distinguished the Commission from other commissions nationally: "Article 15 of our Constitution is unique in that no other state has given its Commission, by whatever name called, so extensive power and jurisdiction."⁶ The court called the Commission's responsibility for supervising public service corporations "one of the most vexatious as well as vital questions of government" and noted that it was created by the state's founding fathers "primarily for the interest of the consumer."⁷ In short, the court ruled that the Arizona Legislature could not infringe on the Commission's exclusive powers to regulate public service corporations; it could only legislate to broaden its powers.

A later line of cases, beginning with *Arizona Corp. Commission v. Pacific Greyhound Lines*,⁸ questioned the breadth of the Commission's authority and "apparently established"⁹ the doctrine that the Commission's exclusive constitutional authority is limited to ratemaking. However, the Arizona Supreme Court, in *Arizona Corp. Commission v. State ex rel. Woods*, criticized the *Greyhound* court's narrow construction of the Commission's authority to regulate public service corporations.¹⁰ In this decision, the court noted that *Pacific Greyhound's* interpretation of article 15, section 3 was unreasonably narrow in light of "the framers' vision of the Commission's role" as well as earlier case law.¹¹ The court, however, declined to overrule *Pacific Greyhound*, noting that even a restrictive interpretation of article 15, section 3 extends the Commission's authority beyond simple ratemaking to actions that are required to complete its ratemaking responsibilities.¹² Constricting the scope of the Commission's authority, according to the *Woods* court, would frustrate the framers' intent in

5. *E.g., Woods*, 830 P.2d at 812; *State v. Tucson Gas, Elec. Light & Power Co.*, 138 P. 781, 783-84 (Ariz. 1914).

6. *Tucson Gas*, 138 P. at 783.

7. *Id.* at 786.

8. 94 P.2d 443, 450 (Ariz. 1939); *see also Rural/Metro Corp. v. Ariz. Corp. Comm'n*, 629 P.2d 83, 85 (Ariz. 1981) (in banc) (finding that the legislature's ability to expand the Commission's authority is limited to the public service corporations delineated in article 15, section 2, of the Arizona Constitution).

9. *Woods*, 830 P.2d at 815 & n.8 (noting that the language in the *Greyhound* opinion is "less than clear").

10. *Woods*, 830 P.2d at 813-15, 818.

11. *Id.* at 813-15.

12. *Id.* at 815.

forming the Commission. Today, the Commission continues to issue decisions that are rooted in the broad language of the constitution and in the spirit of *Woods* and other early cases affirming its position as the exclusive regulator of public service corporations in Arizona.¹³

II. ORDERS PRELIMINARY

A. Recognizing the Problem

As existing private water companies seek to expand their boundaries to accommodate new customers and new water companies sprout up in rural Arizona and on the periphery of the state's urban centers, the Commission is facing new questions about how to license these companies. The Commission's practice of issuing conditional CC&Ns as the primary vehicle for approving new companies and expansions is evolving to meet the new challenges posed by growth, in particular its consequences for conservation and water supplies.¹⁴

For decades, the Commission issued conditional CC&Ns, granting the CC&N but imposing a series of requirements designed to be subsequently met by the water company.¹⁵ Developers generally favor this form of CC&N because it allows them to proceed with construction and implementation of their project while the water company making the application for the CC&N works on fulfilling the conditions.¹⁶ The fundamental difference between an Order Preliminary and a conditional CC&N is that under the conditional CC&N, developers may commence construction of homes and a water system designed to deliver services to residents, whereas under the Order Preliminary regime, a developer could not begin building either homes or the water system until he had met all of the conditions outlined in the Order Preliminary and then been granted a final CC&N by the Commission. As noted above, the Commission is beginning to question the usefulness of the conditional CC&N, at least in cases involving water companies

13. Observers of the Commission have also argued for a continued expansive reading of the body's authority and reach. *E.g.*, Deborah Scott Engelby, Comment, *The Corporation Commission, Preserving Its Independence*, 20 ARIZ. ST. L.J. 241 (1988). Scott Engelby argues that *Rural/Metro* failed to take into account the constitution's framers' "intent to encompass the entire field of public utilities." *Id.* at 259. She contends that the Commission should be permitted to determine on a case-by-case basis which new technologies and forms of utilities should be brought under its regulatory umbrella. *Id.*

14. In the case of water companies, a CC&N is essentially a grant of authority by the Commission to do business as a monopoly water company. CC&Ns are provided for by statute. ARIZ. REV. STAT. ANN. § 40-281 (2006). Section 281 permits the Commission to issue a CC&N authorizing public service corporations to conduct business in Arizona; section 282(D) allows the Commission to issue Orders Preliminary authorizing public service corporations to conduct business in Arizona.

15. In some cases, water companies are given up to 24 months to fulfill the prescribed conditions.

16. Often the water company making the application for a new CC&N is owned by the developer of the subdivision or is affiliated with the developer. *See, e.g.*, Picacho Water Co., Decision No. 69174, Docket No. W-03528A-06-0313, at 3 n.2 (Ariz. Corp. Comm'n Dec. 5, 2006); Woodruff Water Co., Decision No. 68453, Docket No. W-01445A-04-0755, at 5 & n.1 (Ariz. Corp. Comm'n Feb. 2, 2006).

outside Active Management Areas ("AMAs").¹⁷ To that end, Chairman Jeff Hatch-Miller issued a letter in February 2005 announcing that the Commission had opened a generic docket to consider replacing conditional CC&N's with Orders Preliminary.¹⁸

Orders Preliminary are a seldom-used form of CC&N authorized under statute:

If a public service corporation desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not yet been granted to it, the corporation may apply to the commission for an order preliminary to the issue of the certificate. The commission may make an order declaring that it will thereafter, upon application, under rules it prescribes, issue the desired certificate, upon terms and conditions it designates, after the corporation has obtained the contemplated franchise or permit or may make an order issuing a certificate on the condition that the contemplated franchise or permit is obtained and on other terms and conditions it designates. If the commission makes an order preliminary to the issuance of the certificate, upon presentation to the commission of evidence that the franchise or permit has been secured by the corporation, the commission shall issue the certificate.¹⁹

In moving toward the issuance of Orders Preliminary outside AMAs, the Commission is attempting to avoid situations where it grants a CC&N that allows a water company to begin serving customers, but later discovers that the company has failed to meet the CC&N conditions. Some of the developer's conditions are critical to a public interest standard, including obtaining a Letter of Adequate Water Supply from ADWR or an Approval to Construct from the Arizona Department of Environmental Quality ("ADEQ").²⁰ The Commission was clearly

17. See generally Ariz. Dep't of Water Res., Assured/Adequate Water, http://www.azwater.gov/WaterManagement_2005/Content/OAAWS/default.asp (last visited Mar. 9, 2007). The 1980 Groundwater Management Act created five Active Management Areas: Prescott, Pinal, Phoenix, Tucson and Santa Cruz. ARIZ. REV. STAT. ANN. § § 45-411, -411.03. Water conservation and recharge requirements are stricter within the state's AMAs; for example, inside an AMA, developers must comply with ADWR's Assured Water Program, which requires a demonstration that a water supply to the proposed development will be physically, legally, and continuously available for the next 100 years. This showing must be made before the developer records plats or sell parcels. Outside AMAs, developers must still determine whether there is a 100-year assured water supply, but may proceed with the sale of lots and the recording of plats as long as the developer has informed the buyer of the lack of an assured water supply.

18. See Letter from Jeff Hatch-Miller, Chairman, Ariz. Corp. Comm'n, to All Interested Parties (Feb. 14, 2005), available at <http://www.azcc.gov/divisions/admin/about/Hatch-Miller-02-14-05.pdf>.

19. ARIZ. REV. STAT. ANN. § 40-282(D).

20. Under normal circumstances, before any additions can be made to the infrastructure for a public water system, the company must first get an Approval to Construct from ADEQ. For a water company located inside an AMA, before the developer can get Department of Real Estate approval to sell lots, the developer must prove to ADWR

worried that with conditional CC&Ns, it could be conveying a property right, difficult to dislodge, before the water company and associated developers had achieved the necessary approvals from other state agencies.²¹ Thus, in August 2006, after receiving only two comments during a year-long comment period,²² the Commission directed Staff to begin using Orders Preliminary as a matter of standard practice when preparing recommendations on all new CC&N applications and CC&N extensions outside AMAs.

B. Historical Context

The Commission has utilized the Order Preliminary sparingly over the past three decades. For example, Orders Preliminary were issued in cases involving the Morristown Water Company and Johnson Utilities (Decision Nos. 41802 and 67586, respectively). In the Johnson Utilities case, the Commission granted an Order Preliminary requested by Johnson Utilities which was to be used as a vehicle to assume control over the assets and service territory of the beleaguered Arizona Utility Supply and Services, L.L.C. ("AUSS").²³ In the end, Johnson Utilities had to fulfill a number of conditions before a final CC&N for the territory previously served by AUSS would be transferred to Johnson.²⁴

that it has a 100-year assured supply of water. For developments outside an AMA developers just need a letter of adequacy or inadequacy to get permission from the Department of Real Estate to sell lots.

21. See Letter from Hatch-Miller to All Interested Parties, *supra* note 18, stating:

In many instances, the utility will begin serving customers in the certificated area in question without meeting one or more of the conditions. As a result, the utility is serving customers without a valid CC&N, thereby operating without the necessary permits and possibly endangering the public. In other instances, the applicant will request several extensions of time to comply with the conditions, saddling both itself and Commission Staff with unnecessary work.

22. Constellation New Energy and Strategic Energy filed comments on March 30, 2005 and Arizona Water Company filed comments on May 18, 2005. The companies wrote in support of the Commission's continuing its practice of issuing conditional CC&Ns but preventing the applicant from serving customers within the CC&N until all conditions have been fulfilled and the applicants have received a confirmation letter from the Commission. Arizona Water Company filed comments on May 18, 2005, indicating support for the continued issuance of conditional CC&Ns, with the addition of language preventing the applicant from serving customers until all conditions have been fulfilled and the applicant has received a confirmation letter from the Commission.

23. Ariz. Util. Supply & Servs., L.L.C., Decision No. 67586, Docket No. SW-04002A-02-0837, at 13 (Ariz. Corp. Comm'n Feb. 15, 2005). AUSS was a wastewater utility that filed for bankruptcy protection and experienced difficulty operating two of its treatment plants; thus, this case essentially involved one utility coming to the rescue of another. See *id.* at 5-7.

24. *Id.* at 8-9. Among the conditions that had to be met by Johnson before a final CC&N would issue were the transfer of all AUSS's franchise rights with Pinal County to Johnson, the transfer of any governmental approvals needed by AUSS to Johnson Utilities, and a series of ADEQ requirements necessary to the operation of AUSS plants and transfer of the assets.

Conversely, in *Utility Source, L.L.C.*,²⁵ the Commission acknowledged the usefulness of Orders Preliminary but nonetheless denied the request.²⁶ In its application, the water company sought two concessions from the Commission: first, a conditional CC&N for a segment of homeowners that were already being served, but without a CC&N; and, second, an Order Preliminary for a future phase of the development.²⁷ The Commission ultimately granted a conditional CC&N for the portion of the development that was already being served, but it rejected the bid for an Order Preliminary because the water company had violated title 40, section 281 of the Arizona Revised Statutes by serving customers without a CC&N.²⁸ Consequently, the Commission ruled that the water company would have to apply separately for a CC&N extension for the future development.²⁹

Perhaps the most compelling evidence of the need for Orders Preliminary comes from a case pending before the Commission out of Mohave County.³⁰ This application involves the effort of a Nevada developer to obtain a conditional CC&N for a 30,000 home development in an area outside Kingman, Arizona. The application was filed with the Commission on July 7, 2005, and subsequently received a hearing before an Administrative Law Judge. Four days prior to the Commission's scheduled vote on the Recommended Opinion and Order, the Company's attorneys filed a letter in the docket from the ADWR, which stated that the developer had not proven up adequate water supplies. Concerned about ADWR's findings and the prospect of voting on a CC&N application that had critical deficiencies, two Commissioners requested an additional evidentiary hearing as well as discovery. At the time of this writing, the Commission is conducting additional evidentiary hearings and discovery in the matter and has hosted one public comment session in Kingman to collect input from area residents. In this instance, the use of an Order Preliminary would allow the Commission to avoid a scenario in which it might approve a CC&N, only to discover later that the company failed to acquire adequate water supplies to serve the area.

While construction of a given subdivision may be delayed during the time it takes a water company to obtain the permits required by an Order Preliminary, the Commission will have upheld the public interest by ensuring that the water company in question actually has an adequate or assured water supply, an approval to construct, and the necessary county franchise permit prior to serving its customers, all factors that reduce the likelihood of forming a water company where none should be. The consequence of this policy for the internal operation of the Commission is that most, if not all, of the Recommended Opinion and Orders in cases involving new CC&N requests and CC&N extensions in areas outside AMAs will come to us in the form of an Order Preliminary. Thus, the

25. Decision No. 67446, Docket No. WS-04235A-04-0073 (Ariz. Corp. Comm'n Jan. 4, 2005).

26. *Id.* at 10–11, 25.

27. *Id.* at 10.

28. *Id.* at 20, 23–25.

29. *Id.* at 25.

30. See Perkins Mountain Util. Co., Docket Nos. W-20380A-05-0490, SW-20379A-05-0489 (Ariz. Corp. Comm'n filed July 7, 2005).

recommended Order Preliminary would be approved or denied at a Commission Open Meeting, and, after the applicant water company meets all of the pre-conditions, it would return to the Commission for a final Order granting or denying a CC&N.

III. REQUIRING WATER RE-USE AT ARIZONA'S PRIVATE WATER COMPANIES

A. Toward a New Paradigm: Integrated Water and Wastewater Systems

In recent months, the Commission has issued decisions indicating a preference that new subdivisions be served, where possible, by integrated water and wastewater companies. These integrated utilities help to achieve economies of scale, encourage conservation efforts, and facilitate the use of effluent for golf course irrigation, ornamental lakes, and other water features.³¹ The concept of integrated wastewater and water companies was approved by the 1999 Commission Water Task Force, a working group comprised of Commission Staff, the Residential Utility Consumer Office ("RUCO"), ADEQ, ADWR, and water company stakeholders. Though the Task Force's policy proposals have never been formally adopted by the Commission, the integrated water and wastewater model has been explicitly favored in several recent decisions. One of these cases involved a clash between the Arizona Water Company ("AWC"), a stand-alone water utility, and a competing entity that proposed to serve the area in question with an integrated water and wastewater operation.³²

In *Woodruff*, the Commission was presented with a choice between two water companies that wanted to serve the same 3,200 acre development (called Sandia) in a fast growing area of Pinal County.³³ The Commission's decision was heavily influenced by the question of whether the CC&N should be granted to an entity capable of utilizing effluent. Ultimately, the Commission awarded the CC&N to Woodruff Water and Sewer Companies over AWC. The Commission chose Woodruff despite the fact the AWC was a far more experienced water provider.³⁴ The Commission favored Woodruff's planned use of effluent from its

31. The following companies are integrated water and wastewater providers: Ajo Improvement Co., Baca Float Water Co., Bachmann Springs Utility Co., Clear Springs Utility Co., Cloud Nine Water Co., Far West Water and Sewer, Fisher's Landing Water and Sewer Works, Francisco Grande Utility Co., Johnson Utilities Co., MHC Operating Limited Partnership, Oak Creek Utility Co., Pima Utility Co., Rainbow Parks, Red Rock Utilities, Rio Rico Utilities, Rio Verde Utilities, Sunrise Utilities, Sunrise Vistas Utilities, Utility Source, Willow Springs Utilities, Litchfield Park Service Co., Santa Cruz Water Co., Picacho Water Co., Palo Verde Utilities, Santa Rosa Utilities, and Arizona-American Water. Arizona-American is the oldest integrated water-wastewater company in Arizona.

32. Woodruff Water Co., Decision No. 68453, Docket No. W-01445A-04-0755, at 5-6 (Ariz. Corp. Comm'n Feb. 2, 2006), *appeal filed*, 1CA-CV 07-0167 (Ariz. Ct. App. Mar. 9, 2007).

33. At build-out the Sandia development will serve an estimated 25,000 to 30,000 people. *Id.* at 7.

34. *Id.* at 5, 31. AWC is a water company serving more than 80,000 customers in eight Arizona counties. Woodruff is a water company founded by a developer with no prior experience operating water companies in Arizona, though the Company did put on evidence

planned wastewater treatment facility to sustain the development's proposed golf course.³⁵ During the CC&N hearing, Woodruff testified that its integrated approach to wastewater and water was designed to facilitate a 20-year build-out of the development, and that it would allow it to implement a water reuse program that it called "essential" to the project.³⁶ Against this backdrop, the Commission concluded that "[t]he benefits of developing and operating integrated water and wastewater utilities in this instance outweigh the economies imputed to AWC's larger scale."³⁷

Companies competing for the right to serve some of the state's fastest growing areas are advantaged when they present an integrated approach to the Commission, thus allowing Commissioners the opportunity to mandate the use of effluent from the moment the service area is created.

B. Mandating Effluent for Use on Golf Courses and Ornamental Water Features

In recent decisions, the Commission has begun prohibiting water companies from selling groundwater for use on new golf courses or ornamental water features.³⁸ This effectively means that developers hoping to construct golf courses and ornamental water features within the service territories of water companies subject to this provision will either have to find the effluent for use on their golf courses, or wait to build the golf course until the development is

that it had hired an individual with significant experience running a separate water and wastewater company serving master planned developments in Arizona. *Id.* at 5.

35. *See id.* at 29.

36. *See id.* at 8. During the Commission's Open Meeting on the matter, the company's attorney told the Commissioners that the developer, which was owned by the same individual as the proposed water company, had agreed to voluntarily postpone construction of two golf courses until such time as effluent was made available from build-out of second phase of the development. The Author believes *Woodruff* to be a critical case in the evolution of the Commission's decision making in this area. Woodruff was the first company to concede that it was possible to defer the construction of a golf course until it had adequate build-out of homes to provide the effluent needed for the golf course. Additionally, the Author of this Article offered an amendment to the Administrative Law Judge's Recommended Opinion and Order, which was approved, requiring Woodruff to file with the Commission within a year a report detailing the company's progress in the utilization of effluent on ornamental lakes, golf courses and other aesthetic features.

37. *Id.* at 29.

38. Commission orders now routinely contain the following language:
In recent months, the Commission has become increasingly concerned about the prolonged drought in Central Arizona. Therefore, we believe [the company] should be required to conserve groundwater and that [the company] should be prohibited from selling groundwater for the purpose of irrigating any future golf courses within the certificated expansion areas or any ornamental lakes or water features located in the common areas of the proposed new developments within the certificated expansion areas.

E.g., Ariz. Water Co., Decision No. 69163, Docket No. W-01445A-06-0059, at 10 (Ariz. Corp. Comm'n Dec. 5, 2006).

sufficiently built out to provide the effluent.³⁹ Two water companies have objected to this provision, arguing that it veers into regulatory territory already occupied by ADWR. The opponents of the effluent provision assert that ADWR has promulgated rules under its Third Management Plan that allow the use of some groundwater on golf courses inside AMAs, and that therefore the Commission prohibition goes too far.⁴⁰ The Commission retained the language over the Company's objections in both instances.⁴¹ The Commission should continue its recently established practice of prohibiting groundwater for use on golf courses and ornamental water features in order to achieve the state's conservation goals.

C. Aggressive Water Reuse by Newly Formed Water Companies: The Global Water Resources Example

While it has become commonplace for wastewater utilities to deliver effluent for use on golf courses, greenbelts, ornamental lakes, and other ornamental water features (and for the Commission to require these uses as a condition to a new CC&N) no Arizona water or wastewater company has yet provided effluent for outdoor or indoor residential use. One Arizona water company, however, has announced plans to begin the aggressive use of effluent at the home-site. Global Water Resources recently briefed Corporation Commissioners on the company's decision to take effluent to home-sites within the Belmont development in western Maricopa County, a 25,000 acre residential

39. To date, the language prohibiting the use of groundwater on new golf courses has been adopted in twelve cases: Empirita Water Co., Decision No. 69399, Docket No. W-03948A-06-0490, at 13 (Ariz. Corp. Comm'n Mar. 29, 2007); Ariz. Water Co., Decision No. 69386, Docket No. W-01445A-06-0317, at 14 (Ariz. Corp. Comm'n Mar. 22, 2007); Lucky Hills Water Co., Decision No. 69381, Docket No. W-01961A-06-0037, at 8 (Ariz. Corp. Comm'n Mar. 22, 2007); Green Acres Water, L.L.C., Decision No. 69256, Docket No. W-20430A-05-0839, at 18 (Ariz. Corp. Comm'n Jan. 19, 2007); Beaver Dam Water Co., Decision No. 69243, Docket No. W-03067A-06-0117, at 7 (Ariz. Corp. Comm'n Jan. 19, 2007); Diablo Village Water Co., Decision No. 69206, Docket No. W-02309A-05-0501, at 11 (Ariz. Corp. Comm'n Dec. 21, 2006); Picacho Water Co., Decision No. 69174, Docket No. W-03528A-06-0313, at 7 (Ariz. Corp. Comm'n Dec. 5, 2006); Ariz. Water Co., Decision No. 69163, Docket No. W-01445A-06-0059, at 10 (Ariz. Corp. Comm'n Dec. 5, 2006); Willow Springs Utils., L.L.C., Decision No. 68963, Docket No. WS-20432A-05-0874, at 16 (Ariz. Corp. Comm'n Sept. 21, 2006); Johnson Utils. Co., Decision No. 68961, Docket No. WS-02987A-05-0695, at 7 (Ariz. Corp. Comm'n Sept. 21, 2006); Diversified Water Utils., Inc., Decision No. 68960, Docket No. W-02859A-04-0844, at 6 (Ariz. Corp. Comm'n Sept. 21, 2006); Ariz. Water Co., Decision No. 68919, Docket No. W-01445A-05-0701, at 7 (Ariz. Corp. Comm'n Aug. 29, 2006).

40. See Arizona Water Company's Exceptions to Administrative Law Judge's Recommended Order at 5, Ariz. Water Co., Decision No. 69163, Docket No. W-01445A-06-0059 (filed Oct. 12, 2006); Exceptions of Picacho Water Company to Administrative Law Judge's Recommended Opinion and Order, Picacho Water Co., Decision No. 69174, Docket No. W-03528A-06-0313 (filed Nov. 16, 2006).

41. See Picacho Water Co., Decision No. 69174, at 7; Ariz. Water Co., Decision No. 69163, at 10.

subdivision.⁴² This subdivision will receive water from the Water Utility of Greater Tonopah and wastewater service from Hassayampa Utilities, both owned by Global.⁴³

Global is proposing using reclaimed water for all outside uses at home sites within the Belmont community. Assuming the average home usage is 0.4 acre-feet ("AF") of water, 0.16 AF for outside uses and 0.24 AF for indoor uses, the home would send 0.16 AF of discharge to treatment.⁴⁴ Under Global's Belmont proposal, the 0.16 AF of discharge would go to treatment and then be used as treated effluent to supply the outside water needs for homes within the development.⁴⁵ Basic water reclamation would result in a decrease in annual water consumption by 30%, but with the aggressive use of water reclamation annual water consumption is reduced by 40% at Belmont.⁴⁶ The neighborhood would not discharge any water, compared with a typical neighborhood, which discharges 117,288,000 gallons of water a year.⁴⁷ When the plan is complete, it is estimated that Belmont will be the largest master planned community with fully integrated water reclamation planning in Arizona.⁴⁸ The Commission should begin a process designed to examine whether provisioning of effluent for use at home sites should eventually become a requirement in future CC&N approvals, particularly in cases involving large, well-capitalized utilities.

D. Arizona Department of Water Resources' Modified Non-Per Capita Program: Expecting Conservation at all Water Companies

The Commission is likely entering an era of mandating conservation measures at Arizona's regulated water companies. This is in part because ADWR is currently engaged in a stakeholder process that will culminate in the amendment of the agency's Third Management Plan, and with that amendment will come new conservation requirements for water companies.

The Third Management Plan is designed to implement the safe yield requirement established pursuant to the 1980 Groundwater Management Act. It is believed that the newly amended rules governing safe yield will require water systems, including the private water companies regulated by the Commission, to implement water conservation measures, called Best Management Practices ("BMPs"), geared toward achieving the state's safe yield target.⁴⁹ Larger water companies will likely be asked to implement more BMPs than smaller companies,

42. See Briefing to Commissioners, Trevor T. Hill, Global Water Resources LLC, Minimizing Water Use/Maximizing Water Reuse in Development (Apr. 2, 2007) (on file with author).

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* For a typical section of land with 2,250 units, the neighborhood that consumed 293,220,000 gallons of water before reclamation and reuse would now use 175,932,000 gallons of water per year.

47. *Id.*

48. *Id.*

49. See Ariz. Dep't of Water Res., Program Framework: Modified Non-Per Capita Conservation Program (Oct. 5, 2006) (on file with author).

but all companies will be permitted to choose from a list of approximately 25 BMPs.⁵⁰ Among the list of BMPs currently under discussion are the installation or promotion of low-flush toilets or low-pressure shower heads and conservation advertising.⁵¹ In order to meet the requirements, companies will have to show that they have implemented the BMPs, but will not be required to show that the measures have resulted in a prescribed amount of conservation.⁵²

Water companies have long argued that they cannot implement conservation programs because they are unable to obtain rate relief from the Commission for their conservation efforts.⁵³ This is a fundamental misperception on the part of the companies. The Commission has never been asked for rate recovery of these programs, and Commission Staff have made it clear that they would be receptive to filings from Companies seeking to recover (in rates) the costs of implementing conservation programs, particularly those designed to satisfy ADWR's new rulemaking.⁵⁴ The Commission should continue to make it clear that it is ready to facilitate conservation efforts by water companies, especially those programs that are necessary to meet ADWR's new rules, and that the Commission is prepared to do this even before ADWR finalizes its rulemaking. Moreover, the Commission should notify water companies that they can file tariff applications with the Commission that are designed to implement conservation programs. For example, these tariffs could be designed to allow water companies to carry out conservation measures in the same way municipalities do. Such water company tariffs could condition service on the installation of low-flow toilets, low-flow shower heads, or minimal or zero usage of groundwater for outdoor irrigation. The Commission could adopt these tariffs as part of rate cases, CC&N applications or CC&N extensions.

IV. ENCOURAGING CONSOLIDATION OF DISTRESSED WATER COMPANIES AS A MEANS OF ACHIEVING WATER CONSERVATION AND REUSE

Implementation of conservation programs is generally a low priority for the state's troubled water companies. Most of these utilities lack the resources and the management experience to make conservation a priority. The only long-term hope for the advancement of conservation measures at these companies is their consolidation into other larger utilities.

In the 1999 Water Task Force Report to the Commission, Commission Staff and industry stakeholders issued a number of recommendations aimed at

50. See *id.* Under the Draft Program, water companies with up to 5,000 service connections would be required to implement a basic water conservation education program plus one other BMP; companies with between 5,001 and 30,000 service connections would be required to implement the education program plus five BMPs; and companies with more than 30,000 service connections would be required to implement the education program plus ten BMPs.

51. See *id.*

52. See *id.*

53. Interview with Commission Staff, *supra* note 1.

54. *Id.*

encouraging the consolidation of smaller water companies (Class D and E companies with Class A or B or C utilities).⁵⁵ Pursuant to section R14-2-103 of the Arizona Administrative Code, the Commission classifies public service corporations into five categories based upon the public service corporation's annual operating revenue. For water and sewer companies, the breakdown is as follows: Class A: Annual Operating Revenue exceeding \$5,000,000; Class B: Annual Operating Revenue from \$1,000,000 to \$5,000,000; Class C: Annual Operating Revenue from \$250,000 to \$999,999; Class D: Annual Operating Revenue from \$50,000 to \$249,999; Class E: Annual Operating Revenue less than \$50,000. Though each Task Force representative agreed that incentives should be used by the Commission to achieve the goal of consolidating distressed water companies, the group could not come to consensus on which incentives are best.⁵⁶ Among the consolidation incentives promoted by Staff as part of the Task Force report were rate premiums for larger water companies that acquire smaller companies, and the development of a policy or rule setting forth the Commission's parameters for acquisition adjustments—premiums on the purchase price of troubled water companies.⁵⁷ The use of an acquisition adjustment represents a fairly radical deviation from normal ratemaking processes, as it involves a decision by the Commission to allow rate base to reflect a purchase price for a company's assets that is higher than the book value of that company. Under ordinary circumstances, rates are set using the book value of a company's assets at the time they are placed in service.

Staff recommended that acquisition adjustments be used under a specific set of conditions, including where the acquisition would not be deleterious to the acquiring company; where it was in the public interest; where the purchase price was judged to be fair and reasonable; where the recovery period for the resulting acquisition adjustment was set for a definitive period of time; and where the acquisition would have a positive effect on the service of the acquired company.⁵⁸ RUCO opposed the idea of acquisition adjustments, and industry representatives argued for California's policy allowing the use of fair market value in setting acquisition adjustments.⁵⁹

Alternatively, Staff and RUCO agreed that rate premiums on the Company's authorized rate of return could be a valuable tool in the effort to encourage consolidation. Under this proposal, acquisitions would be spurred when an acquiring company realized it would be able to recover the costs of folding in a troubled company, and could do so without the regulatory lag created by the normal ratemaking process at the Commission.⁶⁰ According to RUCO, rate premiums are preferable to acquisition adjustments because they permit the

55. See WATER TASK FORCE, ARIZ. CORP. COMM'N, INTERIM REPORT OF THE ARIZONA CORPORATION COMMISSION'S WATER TASK FORCE 7-11 (1999) (Docket No. W-00000C-98-0153) (on file with author).

56. *Id.* at 8.

57. *Id.*

58. *Id.*

59. *Id.* at 8-9.

60. *Id.* at 9.

Commission to maintain control over the amount of the incentive allowed.⁶¹ Rate premiums, unlike acquisition adjustments, can be limited to a set number of years, or a specific period of time, such as the length of time between rate cases.⁶²

To date, rate premiums and acquisition adjustments have not been formally blessed by the Commission via either a rulemaking or policy statement. Since the Water Task Force report was issued, the Commission has only approved one acquisition adjustment, in a case involving the acquisition by a Class A utility of a small distressed company in southeastern Arizona.⁶³ In that case, which involved the Commission's approval of the purchase of the severely hobbled and disastrously managed McLain water systems in Cochise County, the Commission approved a \$696,000 purchase price⁶⁴ of the companies by Algonquin Water Resources of America, a multinational income fund that owns five water and wastewater companies in Arizona (excluding the McLain systems).⁶⁵ The price represented a significant inflation of the estimated book value of the companies,⁶⁶ which were believed to be in such poor shape that they represented a threat to the health and safety of the companies' customers.⁶⁷ The Commission did not refer to the purchase price as an acquisition adjustment, but that is essentially what it was, as the purchase price was substantially greater than the book value of the company. Moreover, the large purchase premium was being used by the Commission to establish a positive rate base and encourage the purchase by Algonquin.⁶⁸ The Commission acknowledged the extraordinary nature of the acquisition price and of the Commission's role in setting it, but felt it was the only hope for stimulating a purchase and rehabilitation of the companies.⁶⁹

Acquisition adjustments and rate premiums hold promise for use when the Commission desires to encourage the consolidation of small, troubled water companies. Strengthening the two dozen or so small water companies that currently find themselves on the financial ropes would dramatically improve the opportunities for implementing water conservation measures at those companies. The Commission should first endeavor to identify those water companies it believes are the likeliest targets for consolidation. A model for this has been developed in California, where the California Public Utilities Commission ("CPUC") has identified in its 2005 Water Action Plan the goal of providing incentives for the acquisition and operation of small water companies by larger

61. *Id.*

62. *Id.*

63. See *Miracle Valley Water Co.*, Decision No. 68412, Docket No. W-01646A-05-0506, at 12 (Ariz. Corp. Comm'n Jan. 23, 2006).

64. *Id.* at 12.

65. See *N. Sunrise Water Co.*, Decision No. 68826, Docket No. W-20453A-06-0247, at 4-5 (Ariz. Corp. Comm'n June 29, 2006).

66. See Minutes of the Commission Open Meeting (June 27, 2006) (on file with author). The meeting included a discussion by Commissioners regarding the dilapidated condition of the water systems; ultimately, the Commission established a purchase price that was tailored to covering the amount of taxes owed by the water companies to the State of Arizona and Cochise County, rather than to the actual value of the systems.

67. *Id.* at 8.

68. *Id.* at 9-10.

69. *Id.*

private or municipal water companies.⁷⁰ CPUC's Water Action Plan did not identify specific companies for acquisition; rather, the report identified the goal of providing incentives. CPUC Staff, working with other government agencies, has since identified thirty systems (serving 10,500 customers) that would be in a position to qualify for acquisition by larger systems.⁷¹ The Arizona Commission should similarly establish a list of troubled water systems considered candidates for consolidation and then establish a policy statement informing the water company community that acquisition adjustments and rate premiums will be considered to encourage the consolidation of these identified systems where the conditions laid out by Staff in the 1999 Water Task Force are met.⁷²

V. CORRALLING WATER LOSS: CONSERVING WATER BY KEEPING IT IN THE PIPELINE

An increasing number of Arizona's private water companies are suffering from water loss—losses that occur between the point of origin (i.e., either at a well site if groundwater is used, or the Central Arizona Canal if CAP water is used) and the point of use by customers. In determining the amount of acceptable water loss, the Commission generally follows the recommendation of the American Water Works Association that loss greater than 15% is per se unacceptable, and loss below 10% is acceptable. The Commission monitors and enforces this standard in two ways. First, each company must include as part of its annual report to the Commission an accounting of the number of gallons pumped and the number of gallons sold, which, when analyzed, offers a glimpse of the amount of water each company is losing during the distribution process. Second, each company's water loss is reviewed by Commission Staff when the company is before the Commission for a rate case or request for a CC&N extension. The Commission derives its authority to regulate water loss from its authority to establish rates that are just and reasonable.⁷³

The Commission has routinely required companies that are experiencing higher than acceptable levels of water loss to report back to the Commission with a plan to reduce loss to below the 10% standard or to explain why doing so is not

70. CAL. PUB. UTILS. COMM'N, WATER ACTION PLAN 7 (2005), available at http://www.cpuc.ca.gov/static/hottopics/3water/water_action_plan_final_12_27_05.pdf.

71. Memorandum from Michael Miller, Utils. Eng'r, Cal. Pub. Utils. Comm'n, et al. to John Bohn, Comm'r, Cal. Pub. Utils. Comm'n 1 (Oct. 23, 2006) (on file with author).

72. See WATER TASK FORCE, *supra* note 55, at 8.

73. Specifically, title 40, section 250(C) of the 2006 Arizona Revised Statutes provides:

[T]he commission shall by order establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or establish others in lieu thereof, which it finds just and reasonable, and which, if not suspended, shall, on the expiration of thirty days from the time of filing the order, or in such lesser time as the commission grants, become effective and be established, subject to the power of the commission to alter or modify the order.

possible. For instance, in *Livco Water Co.*,⁷⁴ Livco Water was found to have a 17.2% water loss. The Commission required Livco to file a water loss mitigation report with the Commission within 15 months of the effective date of the decision. Furthermore, the Commission ruled that Livco's water loss could not exceed 15%.⁷⁵

In the most recent rate case involving the Pine Water Company, a utility chronically beset by water shortages in the summertime, the Commission rejected a provision in the proposed Settlement Agreement that would have allowed the company to file a water loss plan designed to reduce its 12.6% water loss rate.⁷⁶ The Commission did not find the proposed water loss provision aggressive enough under the circumstances, stating:

Arizona is in a severe drought. Water is a precious resource and is in particularly limited supply in the Pine area. It is unacceptable that a utility would request that its customers pay the costs of a speculative chance for additional water but could determine that reducing existing water loss to within acceptable levels is not "practical." Pine Water's detailed water loss plan shall only address ways to reduce water loss to less than ten percent.⁷⁷

In other words, the Commission was mandating that the Company find a way to get its water loss beneath the 10% standard. The Commission further ordered its Staff to return to it with recommended actions if not satisfied by the Company's plan for remediation of the water loss problem.⁷⁸ Subsequent to this decision, Pine Water filed a detailed report looking at water supplies not only for their certificated area, but for the entire Payson area.

The Commission has also determined that some companies simply cannot come into total compliance with the water loss standard without undertaking unreasonable capital expenditures. In Decision No. 66849, the Commission determined that it would not be reasonable to require the Arizona Water Company to improve its water loss rates to below 10% on its Superior water system. The Commission found that doing so would necessitate the replacement of an above-ground pipeline that traveled significant distances and experienced evaporative losses as a result of warm temperatures.⁷⁹

74. Decision No. 68751, Docket No. W-02121A-05-0820, at 6 (Ariz. Corp. Comm'n June 5, 2006).

75. See *id.* at 6, 17.

76. Pine Water Co., Decision No. 67166, Docket No. W-03512A-03-0279, at 5-6, 15-16 (Ariz. Corp. Comm'n Aug. 10, 2004). Pursuant to the Settlement Agreement, if the Company found that reducing the 12.6% rate was infeasible or impractical, it could present its arguments against further reductions to the Commission. The Settlement Agreement also required the Company to file quarterly reports describing in detail the sources of the Company's water, quantity of water, and gallons of water pumped, whether from the Company's wells or well water obtained via well-sharing agreements, from water hauling or through the pipeline known as Project Magnolia.

77. *Id.* at 11.

78. *Id.* at 15-16.

79. See Ariz. Water Co., Decision No. 66849, Docket No. W-01445A-02-0619, at 41 (Ariz. Corp. Comm'n Mar. 19, 2004).

The Commission's approach to addressing water loss suffers from its passivity. The Commission cannot know whether a company is posting high water losses unless the company comes forward and files for a rate increase or for an expansion of its territory. A random review of one water company's annual reports illustrates that there are companies that remain out of compliance with the water loss requirement in the intervening years between rate cases. For instance, Ehrenberg Water is experiencing an 11% water loss rate and has not been in for a rate case since November, 1996. Golden Shores Water is experiencing a 16% water loss rate and has not been before the Commission since August, 1999.

The Commission's method of addressing water loss also suffers from a lack of auditing of the water loss reports. For instance, the 2003 annual report of the Beardsley Water Company (serving portions of the West Valley) claimed that it had sold five million gallons more than it pumped in 2003, suggesting a next-to-impossible net water gain.⁸⁰ Yet in its 2004 rate case, the Beardsley Water Company was found to have a system-wide water loss of between 2% and 3%.⁸¹

Water losses are also tracked by ADWR through the agency's Annual Water Withdrawal and Use reports, required of all water companies serving within AMAs. But these reports also go largely without audit, and appear to be often unreliable. Using the West End Water Company as an example, the Company's ADWR Annual Water Withdrawal and Use Report for 2002 declared that the Company had withdrawn 137.07 acre-feet, and delivered 126.38 acre-feet to its users, or a water loss rate of 7.8%.⁸² This contrasts with the 2002 Annual Report, filed with the Commission, in which West End Water stated that it sold 87.01 acre-feet of water, but pumped 136.18 acre-feet, for a loss rate of approximately 36%.⁸³

Staunching water losses at Arizona's water companies will require a multi-pronged effort. First, the Commission should continue on its current course requiring companies to engage in water loss mitigation planning whenever those companies come in for rate cases or CC&N extensions. Second, the Commission should consider financial incentives for companies that engage in water loss mitigation, potentially including a surcharge mechanism designed to allow for more timely recovery of costs associated with infrastructure improvements that are aimed at preventing water loss. Such a surcharge has been advocated by a coalition

80. BEARDSLEY WATER CO., ANNUAL REPORT 11 (2003), available at <http://www.azcc.gov/divisions/util/Annual%20Reports/2003/Beardsley%20Water%20Company.pdf>.

81. See ARIZ. CORP. COMM'N, STAFF REPORT: BEARDSLEY WATER COMPANY, DOCKET NO. W-02074A-04-0358: APPLICATION FOR A PERMANENT RATE INCREASE, at attachment A, at 6 (2004).

82. WEST END WATER CO., ANNUAL WATER WITHDRAWAL AND USE REPORT: PROVIDER SUMMARY 2002 (2003).

83. WEST END WATER CO., ANNUAL REPORT (2002), available at <http://www.azcc.gov/divisions/util/Annual%20Reports/2002/West%20End%20Water%20Company.pdf>.

of Arizona water companies⁸⁴ and has been implemented in other states, including Pennsylvania, Delaware, Ohio, and Illinois.⁸⁵

VI. ENCOURAGING CONSERVATION THROUGH TIERED WATER RATES AND CURTAILMENT TARIFFS

Tiered water rates and curtailment tariffs have become the de facto norm for all new water company applications, rate cases, and CC&N extensions. Beginning in 2001, Commission Staff began recommending in each water utility rate case that the Commission adopt a tiered water rate structure in order to properly price water and encourage conservation. The tiered rates are tailored specifically to each water company.

Recent Commission decisions demonstrate the use of tiered rates. In *Chaparral City Water Co.*,⁸⁶ the Commission implemented the following rate schedule:⁸⁷

Commodity Rates (per 1,000 Gallons), based upon the size of the meter going to the customer.

¾" Residential Meter

1,000–3,000 Gallons:	\$1.68
3,001–9,000 Gallons:	\$2.52
Over 9,000 Gallons:	\$3.03

¾" Commercial & Industrial Meter

1,000–9,000 Gallons:	\$2.52
Over 9,000 Gallons:	\$3.03

2" Meter (Residential, Commercial & Industrial)

From 1,000–100,000 Gallons:	\$2.52
Over 100,000 Gallons:	\$3.03

The Commission decision in Arizona Water Company's Eastern Group System⁸⁸ adopted the following rates for the Company's Bisbee system:

84. See INVESTOR OWNED WATER UTILS. OF ARIZ., RECOMMENDATIONS TO THE ARIZONA CORPORATION COMMISSION'S WATER TASK FORCE 10 (2005) (on file with author). The IOWUA white paper called on the Commission to implement a number of reforms geared toward allowing companies greater financial recovery. Among those proposals was the DSIC surcharge mechanism to permit water companies to recover funds from ratepayers between rate cases for "qualifying system improvement projects," including expenditures made by the company for "projects that reduce water losses, enhance water quality, [and] improve fire protection and long-term system viability." *Id.* at 5.

85. *Id.* at 4–5.

86. Decision No. 68176, Docket No. W-02113A-04-0616 (Ariz. Corp. Comm'n Sept. 30, 2005).

87. *Id.* at 41–42.

88. Ariz. Water Co., Decision No. 66849, Docket No. W-01445A-02-0619 (Ariz. Corp. Comm'n Mar. 19, 2004)

0 to 10,000 gallons	\$2.594
10,001 to 25,000 gallons	\$3.242
Over 25,000 gallons	\$3.89 ⁸⁹

The rates for the Company's Apache Junction System:

0 to 10,000 gallons	\$1.9688
10,001 to 25,000 gallons	\$2.4610
Over 25,000 gallons	\$2.9532 ⁹⁰

Between 2001 and 2004, the Commission began implementing curtailment plans for water companies as they filed applications at the Commission for rate cases and CC&N extensions. In May 2004, the Commission took steps to encourage every water company in Arizona to adopt a water curtailment tariff, regardless of whether they intended to come in for a rate case or CC&N extension in the near future. Originally designed to address emergencies such as a lightning strike to a well, the Commission realized that curtailment tariffs could also be used by water companies to require customers to conserve during a water shortage or severe drought conditions. Today, each water company that comes before the Commission for a rate case or CC&N extension must propose a curtailment tariff as a part of its case. If it fails to do so, Commission Staff proposes the tariff.

The Pine and Bella Vista Water Companies, serving Pine and Sierra Vista respectively, have used curtailment tariffs with regularity to address seasonal water shortages.⁹¹ At the Pine Water Company, customers have become accustomed to a curtailment regime that allows the Company to prohibit certain water uses at Stages 3, 4, and 5, dependent on water production and storage levels at the time.⁹²

The Pine curtailment tariff operates as follows:

Stage 1 (green): Water storage level is at least 90% of total capacity; no curtailment or notice required.

Stage 2 (blue): Water storage level is less than 90%, but at least 75% of capacity for at least 48 consecutive hours. Voluntary conservation measures may be employed by customers to reduce water consumption by 10%. Outside watering on weekends and holidays is curtailed. The Company is required to notify customers by changing sign postings, emailing, and posting a sign in the Pine Post Office.

Stage 3 (yellow): Water storage level is less than 75%, but at least 65% of its capacity for 24 consecutive hours. Mandatory conservation measures must be employed by customers to reduce water consumption by 25%. Outdoor watering is

89. *Id.* at 48.

90. *Id.*

91. See, e.g., Teresa McQuerrey, *Water Saving Mandated by State*, PAYSON ROUNDUP, July 15, 2005, available at <http://www.paysonroundup.com/section/localnews/story/19739>; see also *Bella Vista Water Co.*, Decision No. 67505, Docket No. W-02465A-04-0692 (Ariz. Corp. Comm'n Jan. 20, 2005).

92. See *Pine Water Co.*, Decision No. 65914, Docket No. W-03512A-03-0104 (Ariz. Corp. Comm'n May 16, 2003).

completely curtailed, with the exception of livestock. The Company is required to notify customers by changing sign postings, emailing, and posting a sign in the Pine Post Office.

Stage 4 (orange): Water storage or production is less than 65%, but at least 55% of capacity for 24 consecutive hours. Mandatory water restrictions are put into place and customers can be disconnected for not complying.

Stage 5 (red): Water storage or production is less than 55% of capacity for 12 consecutive hours. Similar to Stage 4, mandatory water restrictions are put into place.⁹³

Customers are notified of the Stages via a bill stuffer and the posting of the Stage colors on flags throughout the service territory.⁹⁴

The Bella Vista Water Company implemented a similar curtailment tariff, but found that some customers violated the mandatory curtailment measures. Bella Vista claimed it had few ways to force customers to abide by the curtailment stages and wanted to impose a presumptive violation of the advanced stages of the tariff. Under the Company's proposal to amend the tariff on its Southern system, customers using more than 600 gallons per day or 18,000 gallons per month during Stages 4 and 5 (when outdoor uses were prohibited) were presumed to be using water for those prohibited purposes.⁹⁵ The curtailment tariff approved by the Commission in *Bella Vista Water Co.* permits the Company to shut customers off with prescribed notice requirements, if they are issued a presumptive violation.⁹⁶ However, concerned about the effect the presumptive violation and ensuing shut-offs would have on customers, the Commission required the Company to follow strict notification guidelines aimed at providing the maximum amount of notice to customers.⁹⁷ Specifically, the Commission altered Bella Vista's curtailment notice proposal to require the Company to give presumptive violators two business days' notification that they are believed to be in violation of the tariff prior to shutting the customer's water off.⁹⁸ Customers, during those two days, may present evidence to the Company that their water usage was higher than the allowed 600 gallons per day as a result of permitted water uses.⁹⁹ The customer, pursuant to normal Commission rules, could also lodge a complaint against the Company at the Commission, which would be addressed by the Commission's Consumer Services Section.¹⁰⁰ The Commission also mandated that when taking special meter readings designed to demonstrate whether the customer was in violation, the Company must notify the customer of the reading and not charge the customer for it.¹⁰¹

93. *Id.*

94. *Id.*

95. See *Bella Vista Water Co.*, Decision No. 67505, Docket No. W-02465A-04-0692, at 2.

96. *Id.* at exhibit A.

97. See *id.*

98. *Id.* at 4.

99. *Id.*

100. *Id.* at exhibit A.

101. *Id.* at 4.

VII. FORCED CONSERVATION THROUGH HOOK-UP MORATORIUMS WHEN ALL ELSE HAS FAILED

In recent years, the Commission has been among the few Arizona governmental entities to implement a comprehensive hook-up moratorium on a water system, a draconian but sometimes necessary method of conserving water supplies and staunching a downward spiral by a water company. On two recent occasions the Commission imposed a comprehensive moratorium either to address chronic water shortages caused by drought conditions, or to prevent the exacerbation of problems caused by the failure of the water company to invest in the water system's infrastructure, which had led to repeated outages on the system. In these instances, the Commission took the extraordinary step of preventing further connections to the water system, a de facto prohibition on development in the area in one case, and a severe restriction on growth in the other.¹⁰²

A. Pine Water Company

Since 1989, the water-shortage-prone Pine Water Company has operated under some form of hook-up restriction.¹⁰³ In 1989, the Commission established a total moratorium on new hook-ups. It allowed 10 connections per month beginning in 1990, lowered the limitation to one per month in 1996, and raised it again to 25 hook-ups per month in December 2002.¹⁰⁴ The company was required in a subsequent decision to present the Commission with semi-annual reports on the status of its water supply, and Staff was directed to use that information in drafting a recommendation for the Commission regarding the need for continuation or alteration of the 25 per month hook-up restriction.¹⁰⁵ On November 19, 2004, Staff filed a compliance report recommending the Commission adopt a complete prohibition on new connections to the Pine Water Company, citing the Company's reliance on a pipeline importing water from the Strawberry Water Company into Pine, as well as summertime water hauling, to meet the summertime demands of

102. The Commission recently addressed a third proposed hook-up moratorium in *Desert Hills Water Co.*, Decision No. 68780, Docket No. W-02124A-06-0379 (Ariz. Corp. Comm'n June 19, 2006). In this case, the Commission was presented with a well-capitalized water company that had failed to invest in adequate water infrastructure to serve a growing population in north Phoenix, resulting in numerous outages and water quality complaints. Staff recommended the Order to Show Cause, which would require, among other remedies, a hook-up moratorium until the issues facing the company are resolved. During the pendency of the case, however, the Company was purchased by the nearby Town of Cave Creek. Both the proposed purchase and the Order to Show Cause are currently pending before the Commission.

103. Pine, Arizona sits atop fragmented rock formations that rely on rain and snow melt for groundwater collections. Groundwater is the main source of water for the Pine Water Company. See *Pine Water Co.*, Decision No. 67823, Docket No. W-03512A-03-0279, at 3 (Ariz. Corp. Comm'n May 5, 2005).

104. See MARLIN SCOTT, JR., ARIZ. CORP. COMM'N, COMPLIANCE STAFF REPORT FOR PINE WATER COMPANY PER DECISION NO. 67166, at 1 (2004) (Docket No. W-03512A-03-0279) (on file with author); see also *Pine Water Co.*, Decision No. 64400, Docket No. W-03512A-01-0764, at 8 (Ariz. Corp. Comm'n Jan. 31, 2002).

105. See *Pine Water Co.*, Decision No. 65435, Docket No. W-03512A-01-0764, at 2 (Ariz. Corp. Comm'n Dec. 9, 2002).

the existing water system, and the potential long-term detriments of the pipeline to the Strawberry system.¹⁰⁶ In its most recent action on the Pine Water Company, the Commission again lowered the allowable per month hook-ups for the company to two residential connections per month, imposed a complete moratorium on new commercial hook-ups, and prohibited any additional main extension agreements.¹⁰⁷ The Commission also imposed a May 2006 deadline for the parties to the case to arrive at a permanent solution to the company's water supply woes or face an automatic moratorium on all new residential hook-ups.¹⁰⁸ As of the writing of this Article, the Company has implemented the comprehensive moratorium.

B. McLain Water Companies

In July 2005, the customers of the McLain water systems experienced one of the longest water outages in Arizona history. The outage left the 265 customers of the Horseshoe Ranch and Cochise Water Companies without water for 16 days and caused Commissioners to ask Governor Janet Napolitano to declare an unprecedented state of emergency in the water system's service territory in order to free up funds that are available to the Governor for natural disaster recovery and other emergencies.¹⁰⁹ Ultimately, the Governor tapped funding from her Health Crisis Fund to provide a \$12,500 loan for a new well pump that resolved the short-term crisis. The outage was the latest in a string of incidents involving the dilapidated water system, which two years before had been placed under interim management¹¹⁰ by the Commission due to its previous owner's failure to make necessary improvements and repairs.¹¹¹ As a result of the recent outages and compliance problems on the McLain system, the Commission took the extraordinary step of imposing a total moratorium on new connections to the

106. See SCOTT, *supra* note 104, at 3.

107. Pine Water Co., Decision No. 67823, at 13.

108. See *id.* at 3 (discussing the Pine hook-up moratorium history).

109. The Author contacted Governor Napolitano's staff to ask for the assistance midway through the event. At the time, the systems were under interim management and were embroiled in a bankruptcy action and had no funding available to enable them to resolve the problem in a timely fashion.

110. See McLain, Decision No. 66241, Docket No. W-0146A-03-0601, at 2, 10 (Ariz. Corp. Comm'n Sept. 16, 2003).

111. The McLain water systems have been under heightened Commission scrutiny for years. Commission Staff and ADEQ officials believe the systems never had a chance, as they were constructed using sub-standard materials, had insufficient storage capacity, and suffered many other deficiencies. The Company's founder, Johnny McLain, Sr., filed bankruptcy seven times in the history of the companies. Commission Staff believe that he did so in order to skirt Commission and ADEQ jurisdiction and oversight on numerous occasions. The Commission ultimately voted to approve a purchase price for the Companies and approve Algonquin Water Resources as the new owner. Judge Eileen Hollowell of the U.S. Bankruptcy Court for the District of Arizona gave Algonquin until September 18, 2006 to finalize the purchase, which included entering into a consent decree with ADEQ regarding a schedule for coming into ADEQ compliance. Judge Hollowell allowed for additional time for closure of the sale, and as of the writing of this Article, Algonquin was within days of closing on the purchase of the Companies, and had taken over as interim manager of the systems.

system.¹¹² In order for the moratorium to be lifted, the new owners must prove that a series of prescribed improvements be made at each water company. The improvements must be certified by the Commission Staff.¹¹³

VIII. COMMENTS ON THE NEED FOR GREATER COORDINATION BETWEEN STATE AGENCIES, COUNTIES, AND THE COMMISSION

The Commission can do much to require conservation by Arizona's 350 private water utilities through its ratemaking process.¹¹⁴ However, the discussion above regarding ADWR's ongoing rulemaking, and the Commission's role in ensuring that water companies carry out ADWR's requirements, highlights the need for heightened engagement between the executive branch and the Commission. In order to maximize the ability of each branch of government to effectuate conservation goals, the Commission, ADWR, and ADEQ should institute a process that will lead to greater information sharing regarding water company conservation efforts. This could include monthly meetings between high-level Staff at each agency and the Commission, and should include increased discussions with elected officials. It could also include increased sharing of regulatory compliance filings by water companies between executive branch agencies and the Commission. For instance, the Author recently requested that ADWR send copies to the Commission of all Letters of Adequacy that the agency issues to developers or other entities. Under normal Commission practice, developers seeking to form a water company within an AMA may file a Certificate of Assured Water Supply up to 24 months after a CC&N is issued, while those seeking to form a water company outside an AMA may file a Letter of Adequacy as late as the hearing process.¹¹⁵ Receiving ADWR's determinations with regard to water adequacy directly from the agency and upon issuance, rather than on the developer's timetable, will give the Commission greater information, and perhaps most importantly, more time to incorporate ADWR's determinations into the Commission's analysis of whether to approve a proposed water company.

IX. CONCLUSION

From the earliest days of statehood, the Commission has been called upon by virtue of its constitutionally-driven, exclusive jurisdiction over public service corporations to meet the evolving challenges faced by private water utilities. As Arizona's seemingly unbounded growth continues, the Commission will increasingly be faced with questions of how to encourage and require conservation

112. Miracle Valley Water Co., Decision No. 68272, Docket No. W-01646A-05-0509, at 13 (Ariz. Corp. Comm'n Nov. 8, 2005).

113. See N. Sunrise Water Co., Decision No. 68826, Docket No. W-20453A-06-0247, at 24 (Ariz. Corp. Comm'n June 29, 2006).

114. See discussion *supra* Part I regarding the Commission's broad constitutional and statutory authority.

115. See the preceding discussion of the Commission's decision to begin utilizing the Order Preliminary for water company applications outside AMAs. While this would prevent a developer from filing a Letter of Adequacy after the CC&N is granted, it would still permit a developer to hold on to a Letter of Adequacy (or inadequacy) until the date of a Commission hearing.

by water companies. The Commission has already established a record of encouraging and mandating conservation by water companies through tiered water rates, mandated use of effluent, required water loss improvements and the use of Orders Preliminary outside AMAs. The Commission should build on these efforts by expanding its use of acquisition adjustments, as well as using rate premiums to encourage the consolidation of small water companies, thereby improving the opportunities for conservation at small water utilities. The Commission should also emphasize its receptiveness to rate recovery applications that include spending by companies on prudent and necessary conservation programs, and establish its willingness to consider tariff filings by companies that implement mandatory water conservation by consumers. Finally, the Commission should forge a more regularized relationship with executive branch agencies that will facilitate greater information sharing and maximize the effectiveness of conservation efforts of water companies.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON – Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 **IN THE MATTER OF THE APPLICA-**
9 **TION OF ARIZONA WATER COMPANY,**
10 **AN ARIZONA CORPORATION, TO**
11 **EXTEND ITS EXISTING CERTIFICATE**
12 **OF CONVENIENCE AND NECESSITY AT**
13 **CASA GRANDE, PINAL COUNTY,**
14 **ARIZONA**

DOCKET NO. W-01445A-03-0559

15 **REBUTTAL TESTIMONY OF FRED GOLDMAN, Ph.D, P.E.**

16 **IN THE**

17 **REMAND PROCEEDING**

18 **ON BEHALF OF INTERVENOR**

19 **CORNMAN TWEEDY 560, L.L.C.**

20 **FEBRUARY 5, 2008**

1 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND
2 OCCUPATION.

3 A. My name is Fred Goldman, Ph.D, P.E. I am Vice President of Kennedy Jenks, a
4 consulting engineering firm. My business address is 3003 North Central
5 Avenue, Suite 1150, Phoenix, Arizona 85012.

6 Q. HAVE YOU PREVIOUSLY PROVIDED PRE-FILED DIRECT
7 TESTIMONY IN THIS REMAND PROCEEDING?

8 A. Yes. I submitted pre-filed direct testimony dated January 4, 2008. I incorporate
9 in this rebuttal testimony my pre-filed direct testimony.

10 Q. HAVE YOU REVIEWED THE PRE-FILED DIRECT TESTIMONY AND
11 ACCOMPANYING EXHIBITS OF WILLIAM M. GARFIELD
12 SUBMITTED JANUARY 4, 2008, IN THIS DOCKET?

13 A. Yes. I have read the testimony and reviewed the exhibits.

14 Q. IN THE PRE-FILED DIRECT TESTIMONY OF WILLIAM M.
15 GARFIELD IN THIS REMAND PROCEEDING AT PAGE 6, LINES 2-5,
16 MR. GARFIELD STATES "IF THE CORNMAN TWEEDY PROPERTY
17 WAS DELETED FROM THE COMPANY'S CCN AREA, THE
18 RELIABILITY AND EFFICIENCY OF WATER SERVICE TO THE
19 AREA WOULD SUFFER AND WOULD BE MORE COSTLY,
20 DUPLICATION OF FACILITIES WOULD RESULT, AND THE COST-
21 EFFECTIVE BENEFITS OF REGIONAL PLANNING FOR WATER
22 WOULD BE MATERIALLY DIMINISHED." DO YOU AGREE WITH
23 THIS STATEMENT?

24 A. No. Arizona Water Company ("AWC") has approximately 128,640 acres (201
25 sections times 640 acres) in its existing certificated territory shown on its "Pinal
26 Valley Water System Master Plan" attached as Exhibit WMG-17 to Mr.
27 Garfield's testimony. This certificated acreage does not include thousands of
28 additional acres in applications for extensions of AWC's CC&N pending before

1 the Arizona Corporation Commission. The approximately 1,138-acre portion of
2 the Cornman Tweedy property located within AWC's CC&N amounts to less
3 than 1% of AWC's existing certificated territory shown on the Pinal Valley
4 Water System Master Plan. It is inconceivable that eliminating the 1,138-acre
5 Cornman Tweedy property from the AWC certificated area would result in any
6 noticeable loss of reliability or efficiency to AWC's operations. Any economies
7 of scale would not even be measurable.

8 By comparison, the effect of someday including the 1,138-acre Cornman-
9 Tweedy property in the approximately 4,500-acre existing certificated territory
10 of Picacho Water Company is very substantial. The eventual inclusion of the
11 Cornman Tweedy property would increase the size of the existing Picacho Water
12 Company CC&N by approximately 25%. An increase of 25% would
13 significantly improve the reliability and efficiency of the Picacho Water
14 Company water system. The economies of scale would be very noticeable as
15 illustrated in my pre-filed direct testimony in this remand proceeding and the
16 pre-filed direct testimony of Mr. Hendricks.

17 **Q. IN YOUR OPINION, WOULD THE DELETION OF THE CORNMAN**
18 **TWEEDY PROPERTY FROM AWC'S CC&N HAVE AN ADVERSE**
19 **EFFECT ON THE COMPANY'S PLANS OR ABILITY TO SERVE THE**
20 **REMAINING PORTION OF ITS PINAL VALLEY WATER SYSTEM?**

21 **A.** No. Based upon my review of AWC's Pinal Valley Water System Master Plan
22 (Exhibit WMG-17) and other information provided by AWC in this docket and
23 in responses to data requests, the deletion of the Cornman Tweedy property
24 would have no adverse effect on AWC's water system. The Cornman Tweedy
25 property is located at the southern boundary of the existing certificated territory
26 of AWC. The deletion of this property would require only minor modifications
27 to AWC's plans, and would have no impact on the company's ability to serve its
28 customers.